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7

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

12 In the Matter of the Accusation Against:

Case No. 6176

13 **PARTNER HEALTHCARE, INC.; HENRY**
14 **HUNG YAT CHANG; KHANH-LONG**
15 **THAI; AMMIE HWANG; BRIAN**
16 **GARNER**
17 **2035 S. Myrtle Ave.**
18 **Monrovia, CA 91016**

FOURTH AMENDED ACCUSATION

19 **Pharmacy Permit No. PHY 51078**

20 AND

21 **PARTNER HEALTHCARE, INC.; HENRY**
22 **HUNG YAT CHANG; KHANH-LONG**
23 **THAI; AMMIE HWANG; BRIAN**
24 **GARNER, OWNERS**
25 **2035 S. Myrtle Ave.**
26 **Monrovia, CA 91016**

27 **Licensing Sterile Compounding No. LSC**
28 **99777**

AND

HENRY HUNG YAT CHANG
2035 S. Myrtle Ave.
Monrovia, CA 91016

Pharmacist License No. RPH 53723

AND

1 AND

2 **NESTOR DANIEL SANCHEZ**
3 **13728 Olive St.**
4 **Baldwin Park, CA 91706**

5 **Pharmacy Technician Registration No. TCH**
6 **123802**

7 Respondent.

8 Complainant alleges:

9 **PARTIES**

10 1. Anne Sodergren (Complainant) brings this Fourth Amended Accusation (Accusation)
11 solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board),
12 Department of Consumer Affairs.

13 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078
14 to Partner Healthcare Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian
15 Garner, Owners (Respondent and/or Partner Healthcare and/or the pharmacy). The Pharmacy
16 Permit was in full force and effect at all times relevant to the charges brought herein and will
17 expire on October 1, 2019, unless renewed.

18 3. On or about April 12, 2013, the Board issued Sterile Compounding Permit Number
19 LSC 99777 to Partner Healthcare Inc. doing business as Partner Healthcare Inc.; Henry Hung Yat
20 Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner, Owners (Respondent). The Sterile
21 Compounding Permit was in full force and effect at all times relevant to the charges brought
22 herein and will expire on October 1, 2019, unless renewed.

23 4. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
24 53723 to Henry Hung Yat Chang (Respondent). The Pharmacist License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on October 31, 2019,
26 unless renewed. Chang is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since
27 October 2, 2012.

28 5. On or about May 24, 2012, the Board issued Pharmacy Technician Registration
Number TCH 123802 to Nestor Daniel Sanchez (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought herein and
2 expired on December 31, 2017.

3 **JURISDICTION**

4 6. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 7. Under Section 4300, the Board may discipline any license, for any reason provided in
7 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

8 8. Section 4300.1 states:

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

15 9. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
16 within three years following its expiration may not be renewed, restored, or reinstated and shall
17 be canceled by operation of law at the end of the three-year period. Under Section 4402,
18 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to
19 the expiration of the three-year period.

20 **STATUTORY PROVISIONS**

21 10. Section 490 states, in pertinent part:

22 (a) In addition to any other action that a board is permitted to take against a
23 licensee, a board may suspend or revoke a license on the ground that the licensee has
24 been convicted of a crime, if the crime is substantially related to the qualifications,
25 functions, or duties of the business or profession for which the license was issued.

26 (b) Notwithstanding any other provision of law, a board may exercise any
27 authority to discipline a licensee for conviction of a crime that is independent of the
28 authority granted under subdivision (a) only if the crime is substantially related to the
29 qualifications, functions, or duties of the business or profession for which the
30 licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a plea of nolo contendere. An action that a board is
permitted to take following the establishment of a conviction may be taken when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on
appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

1 (d) The Legislature hereby finds and declares that the application of this section
2 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
3 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
4 number of statutes and regulations in question, resulting in potential harm to the
5 consumers of California from licensees who have been convicted of crimes.
6 Therefore, the Legislature finds and declares that this section establishes an
7 independent basis for a board to impose discipline upon a licensee, and that the
8 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
9 constitute a change to, but rather are declaratory of, existing law.

10 11. Section 4005 allows the Board to adopt rules and regulations as may be necessary for
11 the protection of the public, as follows:

12 [F]or the proper and more effective enforcement and administration of this
13 chapter; pertaining to the practice of pharmacy; . . . pertaining to persons and
14 establishments licensed under this chapter; pertaining to establishments wherein
15 any drug . . . is compounded, prepared, furnished, or dispensed; providing for
16 standards of minimum equipment for establishments licensed under this chapter. . .

17 12. Section 4006 provides as follows:

18 The board may adopt regulations consistent with this chapter and Section
19 111485 of the Health and Safety Code or regulations adopted thereunder, limiting
20 or restricting the furnishing of a particular drug upon a finding that the otherwise
21 unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the
22 public health or safety.

23 13. Section 4007 provides, in relevant part, that: “(b) . . . [R]ules and regulations may
24 require that the function be performed only under the effective supervision of a pharmacist who
25 shall have the overall responsibility for supervising all activities that take place in the pharmacy.”

26 14. Section 4021 sets forth that “‘Controlled substance’ means any substance listed in
27 Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

28 Section 4022 states, in pertinent part:

“Dangerous drug” or “dangerous device” means any drug or device unsafe
for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
without prescription,” “Rx only,” or words of similar import.

(b) Any device that bears the statement: “Caution: federal law restricts this
device to sale by or on the order of a _____,” “Rx only,” or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

1 15. Section 4036.5 states that “‘Pharmacist-in-charge’ means a pharmacist proposed by a
2 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
3 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice
4 of pharmacy.”

5 16. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 17. Section 4060 states, in pertinent part:

8 No person shall possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor . . . This section shall not apply to the possession
11 of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
12 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
13 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
14 correctly labeled with the name and address of the supplier or producer.

15 18. Section 4081 provides, in relevant part, that:

16 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
17 disposition of dangerous drugs...

18 (b) The owner, officer, or partner of a pharmacy ... shall be jointly responsible,
19 with the pharmacist-in-charge, responsible manager ... for maintaining the records
20 and inventory described in this section.

21 19. Section 4105 states, in pertinent part, that “(a) All records or other documentation of
22 the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed
23 by the board shall be retained on the licensed premises in a readily retrievable form.”

24 20. Section 4113 states, in pertinent part, that: “(c) The pharmacist-in-charge shall be
25 responsible for a pharmacy’s compliance with all state and federal laws and regulations
26 pertaining to the practice of pharmacy.”

27 21. Section 4156 states as follows:

28 A pharmacy corporation shall not do, or fail to do, any act where doing or
failing to do the act would constitute unprofessional conduct under any statute or
regulation. In the conduct of its practice, a pharmacy corporation shall observe and
be bound by the laws and regulations that apply to a person licensed under this
chapter.

1 22. Section 4301 of the Code states, in pertinent part:

2 The board shall take action against any holder of a license who is guilty of
3 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
4 to, any of the following:

5 * * * *

6 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
7 deceit, or corruption, whether the act is committed in the course of relations as a
8 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

11 * * * *

12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
14 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction
18 shall be conclusive evidence only of the fact that the conviction occurred. The
19 board may inquire into the circumstances surrounding the commission of the
20 crime, in order to fix the degree of discipline or, in the case of a conviction not
21 involving controlled substances or dangerous drugs, to determine if the conviction
22 is of an offense substantially related to the qualifications, functions, and duties of a
23 licensee under this chapter. A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is deemed to be a conviction within the meaning of this
25 provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting
27 probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

* * * *

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

23. Section 4302 of the Code states:

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

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1 24. Section 4306.5 provides, in pertinent part, that:

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

3 (a) Acts or omissions that involve, in whole or in part, the inappropriate
4 exercise of his or her education, training, or experience as a pharmacist, whether or
5 not the act or omission arises in the course of the practice of pharmacy or the
6 ownership, management, administration, or operation of a pharmacy or other entity
7 licensed by the board.

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

12 (c) Acts of omissions that involve, in whole or in part, the failure to consult
13 appropriate patient, prescription, and other records pertaining to the performance
14 of any pharmacy function.

15 (d) Acts of omissions that involve, in whole or in part, the failure to fully
16 maintain and retain appropriate patient-specific information pertaining to the
17 performance of any pharmacy function.

18 25. Section 4307 of the Code states that:

19 (a) Any person who has been denied a license or whose license has been
20 revoked or is under suspension, or who has failed to renew his or her license while it
21 was under suspension, or who has been a manager, administrator, owner member,
22 officer, director, associate, or partner of any partnership, corporation, firm, or
23 association whose application for a license has been denied or revoked, is under
24 suspension or has been placed on probation, and while acting as the manger,
25 administrator, owner, member, officer, director, associate, or partner had knowledge
26 or knowingly participated in any conduct for which the license was denied, revoked,
27 suspended, or placed on probation, shall be prohibited from serving as a manger,
28 administrator, owner, member, officer, director, associate, or partner of a licensee as
29 follows:

30 (1) Where a probationary license is issued or where an existing license is placed
31 on probation, this prohibition shall remain in effect for a period not to exceed five
32 years.

33 (2) Where the license is denied or revoked, the prohibition shall continue until
34 the license is issued or reinstated.

35 (b) Manager, administrator, owner, member, officer, director, associate,
36 partner, or any other person with management or control of a license as used in this
37 section and Section 4308, may refer to a pharmacist or to any other person who
38 serves in such capacity in or for a licensee.

39 26. Section 4332, subdivision (a), states, in relevant part:

40 Any person who fails, neglects, or refuses to maintain the records required by
41 Section 4081 or who, when called upon by an authorized officer or a member of the
42 board, fails, neglects, or refuses to produce or provide the records within a reasonable

1 time, or who willfully produces or furnishes records that are false, is guilty of a
2 misdemeanor.

3 27. Section 4342 provides, in relevant part, that:

4 (a) The board may institute any action or actions as may be provided by law
5 and that, in its discretion, are necessary, to prevent the sale of pharmaceutical
6 preparations and drugs that do not conform to the standard and tests as to quality and
7 strength, provided in the latest edition of the United States Pharmacopoeia or the
8 National Formulary, or that violate any provision of the Sherman Food, Drug and
9 Cosmetic Law...

10 (b) Any knowing or willful violation of any regulation adopted pursuant to
11 Section 4006 shall be subject to punishment in the same manner as is provided in
12 Sections 4321 and 4336.

13 28. Health and Safety Code section 11158, subdivision (a), states:

14 Except as provided in Section 11159 or in subdivision (b) of this section, no
15 controlled substance classified in Schedule II shall be dispensed without a
16 prescription meeting the requirements of this chapter. Except as provided in
17 Section 11159 or when dispensed directly to an ultimate user by a practitioner,
18 other than a pharmacist or pharmacy, no controlled substance classified in
19 Schedule III, IV, or V may be dispensed without a prescription meeting the
20 requirements of this chapter.

21 29. Health and Safety Code section 11167 states, in pertinent part:

22 Notwithstanding subdivision (a) of Section 11164, in an emergency where
23 failure to issue a prescription may result in loss of life or intense suffering, an order
24 for a controlled substance may be dispensed on an oral order, an electronic data
25 transmission order, or a written order not made on a controlled substance form as
26 specified in Section 11162.1, subject to all of the following requirements:

27 (a) The order contains all information required by subdivision (a) of Section
28 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the
pharmacy reduces any oral or electronic data transmission order to hard copy form
prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance
prescription form that meets the requirements of Section 11162.1, by the seventh day
following the transmission of the initial order; a postmark by the seventh day
following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so
notify the Department of Justice in writing within 144 hours of the prescriber's failure
to do so and shall make and retain a hard copy, readily retrievable record of the
prescription, including the date and method of notification of the Department of
Justice.

(e) This section shall become operative on January 1, 2005.

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1 30. Health and Safety Code section 11167.5 states:

2 (a) An order for a controlled substance classified in Schedule II for a patient
3 of a licensed skilled nursing facility, a licensed intermediate care facility, a licensed
4 home health agency, or a licensed hospice may be dispensed upon an oral or
5 electronically transmitted prescription. If the prescription is transmitted orally, the
6 pharmacist shall, prior to filling the prescription, reduce the prescription to writing in
7 ink in the handwriting of the pharmacist on a form developed by the pharmacy for
8 this purpose. If the prescription is transmitted electronically, the pharmacist shall,
9 prior to filling the prescription, produce, sign, and date a hard copy prescription. The
10 prescriptions shall contain the date the prescription was orally or electronically
11 transmitted by the prescriber, the name of the person for whom the prescription was
12 authorized, the name and address of the licensed skilled nursing facility, licensed
13 intermediate care facility, licensed home health agency, or licensed hospice in which
14 that person is a patient, the name and quantity of the controlled substance prescribed,
15 the directions for use, and the name, address, category of professional licensure,
16 license number, and federal controlled substance registration number of the
17 prescriber. The original shall be properly endorsed by the pharmacist with the
18 pharmacy's state license number, the name and address of the pharmacy, and the
19 signature of the person who received the controlled substances for the licensed skilled
20 nursing facility, licensed intermediate care facility, licensed home health agency, or
21 licensed hospice. A licensed skilled nursing facility, a licensed intermediate care
22 facility, a licensed home health agency, or a licensed hospice shall forward to the
23 dispensing pharmacist a copy of any signed telephone orders, chart orders, or related
24 documentation substantiating each oral or electronically transmitted prescription
25 transaction under this section.

26 (b) This section shall become operative on July 1, 2004.

27 31. Health and Safety Code section 11171 provides that no person shall prescribe,
28 administer, or furnish a controlled substance except under the conditions and in the manner
provided by this division.

REGULATORY PROVISIONS

32 32. California Code of Regulations, title 16, section 1707.3 sets forth that: "Prior to
33 consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and
34 medication record before each prescription drug is delivered. The review shall include screening
35 for severe potential drug therapy problems."

36 33. California Code of Regulations, title 16, section 1709.1 provides that: "(a) The
37 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
38 responsibility for the daily operation of the pharmacy."

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1 34. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d)
2 provides that:

3 * * * *

4 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
5 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
6 secured and distributed. The pharmacy shall be of sufficient size and unobstructed area
7 to accommodate the safe practice of pharmacy.

8 * * * *

9 (d) Each pharmacist while on duty shall be responsible for the security of the
10 prescription department, including provisions for effective control against theft or
11 diversion of dangerous drugs and devices, and records for such drugs and devices.
12 Possession of a key to the pharmacy where dangerous drugs and controlled
13 substances are stored shall be restricted to a pharmacist.

14 35. California Code of Regulations, title 16, section 1715.6, provides that: “The
15 owner shall report to the Board within thirty (30) days of discovery of any loss of the
16 controlled substances, including their amounts and strengths.”

17 36. California Code of Regulations, title 16, section 1716, provides that:

18 Pharmacists shall not deviate from the requirements of a prescription except
19 upon the prior consent of the prescriber or to select the drug product in accordance
20 with Section 4073 of the Business and Professions Code.

21 Nothing in this regulation is intended to prohibit a pharmacist from
22 exercising commonly-accepted pharmaceutical practice in the compounding or
23 dispensing of a prescription.”

24 37. California Code of Regulations, title 16, section 1718, provides that:

25 “Current Inventory” as used in Sections 4081 and 4332 of the Business and
26 Professions Code shall be considered to include complete accountability for all
27 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

28 The controlled substances inventories required by Title 21, CFR, Section 1304
shall be available for inspection upon request for at least 3 years after the date of the
inventory.

 38. California Code of Regulations section 1735 states, in part,

 (a) “Compounding” means any of the following activities occurring in a
licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant
to a prescription:

 (1) Altering the dosage form or delivery system of a drug.

1 39. California Code of Regulations, title 16, section 1735.2, subdivision (h), states:

2 Every compounded drug product shall be given an expiration date representing
3 the date beyond which, in the professional judgment of the pharmacist performing or
4 supervising the compounding, it should not be used. This “beyond use date” of the
5 compounded drug product shall not exceed 180 days from preparation or the shortest
6 expiration date of any component in the compounded drug product, unless a longer
7 date is supported by stability studies of finished drugs or compounded drug products
8 using the same components and packaging. Shorter dating than set forth in this
9 subsection may be used if it is deemed appropriate in the professional judgment of the
10 responsible pharmacist.

11 40. California Code of Regulations, title 16, section 1735.4, subdivision (b), states:

12 “A statement that the drug has been compounded by the pharmacy shall be included on the
13 container or on the receipt provided to the patient.”

14 41. California Code of Regulations, title 16, section 1735.6, subdivision (a), states:

15 “Any pharmacy engaged in compounding shall maintain written documentation regarding
16 the facilities and equipment necessary for safe and accurate compounded drug products. Where
17 applicable, this shall include records of certification(s) of facilities or equipment.”

18 42. California Code of Regulations, title 16, section 1735.8, states, in pertinent part:

19 (a) Any pharmacy engaged in compounding shall maintain, as part of its written
20 policies and procedures, a written quality assurance plan designed to monitor and
21 ensure the integrity, potency, quality, and labeled strength of compounded drug
22 preparations.

23 (b) The quality assurance plan shall include written procedures for verification,
24 monitoring, and review of the adequacy of the compounding processes and shall also
25 include written documentation of review of those processes by qualified pharmacy
26 personnel.

27 (c) The quality assurance plan shall include written standards for qualitative and
28 quantitative analysis of compounded drug preparations to ensure integrity, potency,
quality, and labeled strength, including the frequency of testing. All qualitative and
quantitative analysis reports for compounded drug preparations shall be retained by
the pharmacy and maintained along with the compounding log and master formula
document. The quality assurance plan shall include a schedule for routine testing and
analysis of specified compounded drug preparations to ensure integrity, potency,
quality, and labeled strength, on at least an annual basis.

(d) The quality assurance plan shall include a written procedure for scheduled
action in the event any compounded drug product is ever discovered to be below
minimum standards for integrity, potency, quality, or labeled strength.

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1 43. California Code of Regulations, title 16, section 1770, states, in pertinent part:

2 For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
4 Professions Code, a crime or act shall be considered substantially related to the
5 qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

6 44. California Code of Regulations, title 16, section 1793.7, subdivision (d), states:

7 Any pharmacy employing or using a pharmacy technician shall develop a job
8 description and written policies and procedures adequate to ensure compliance with
9 the provisions of Article 11 of this Chapter, and shall maintain, for at least three years
from the time of making, records adequate to establish compliance with these sections
and written policies and procedures.

10 45. Code of Federal Regulations, title 21, section 1301.75 sets forth, in pertinent part:

11 * * * *

12 (b) Controlled substances listed in Schedules II, III, IV, and V shall be
13 stored in a securely locked, substantially constructed cabinet. However,
14 pharmacies and institutional practitioners may disperse such substances throughout
the stock of noncontrolled substances in such a manner as to obstruct the theft or
diversion of the controlled substances.

15 * * * *

16 46. Code of Federal Regulations, title 21, section 1304.11, subdivision (c), states:

17 “Biennial inventory date. After the initial inventory is taken, the registrant shall take a new
18 inventory of all stocks of controlled substances on hand at least every two years. The biennial
19 inventory may be taken on any date which is within two years of the previous biennial inventory
20 date.”

21 47. Code of Federal Regulations, title 21, section 1306.11, provides:

22 (a) A pharmacist may dispense directly a controlled substance listed in
23 Schedule II that is a prescription drug as determined under section 503 of the Federal
24 Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) only pursuant to a written
prescription signed by the practitioner, except as provided in paragraph (d) of this
25 section. A paper prescription for a Schedule II controlled substance may be
transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile
26 equipment, provided that the original manually signed prescription is presented to the
pharmacist for review prior to the actual dispensing of the controlled substance,
except as noted in paragraph (e), (f), or (g) of this section. The original prescription
27 shall be maintained in accordance with § 1304.04(h) of this chapter.

28 (b) An individual practitioner may administer or dispense directly a controlled
substance listed in Schedule II in the course of his professional practice without a

1 prescription, subject to § 1306.07.

2 (c) An institutional practitioner may administer or dispense directly (but not
3 prescribe) a controlled substance listed in Schedule II only pursuant to a written
4 prescription signed by the prescribing individual practitioner or to an order for
5 medication made by an individual practitioner that is dispensed for immediate
6 administration to the ultimate user.

7 (d) In the case of an emergency situation, as defined by the Secretary in §
8 290.10 of this title, a pharmacist may dispense a controlled substance listed in
9 Schedule II upon receiving oral authorization of a prescribing individual practitioner,
10 provided that:

11 (1) The quantity prescribed and dispensed is limited to the amount adequate to
12 treat the patient during the emergency period (dispensing beyond the emergency
13 period must be pursuant to a paper or electronic prescription signed by the prescribing
14 individual practitioner);

15 (2) The prescription shall be immediately reduced to writing by the
16 pharmacist and shall contain all information required in § 1306.05, except for the
17 signature of the prescribing individual practitioner;

18 (3) If the prescribing individual practitioner is not known to the pharmacist, he
19 must make a reasonable effort to determine that the oral authorization came from a
20 registered individual practitioner, which may include a callback to the prescribing
21 individual practitioner using his phone number as listed in the telephone directory
22 and/or other good faith efforts to insure his identity; and

23 (4) Within 7 days after authorizing an emergency oral prescription, the
24 prescribing individual practitioner shall cause a written prescription for the
25 emergency quantity prescribed to be delivered to the dispensing pharmacist. In
26 addition to conforming to the requirements of § 1306.05, the prescription shall have
27 written on its face "Authorization for Emergency Dispensing," and the date of the
28 oral order. The paper prescription may be delivered to the pharmacist in person or by
mail, but if delivered by mail it must be postmarked within the 7-day period. Upon
receipt, the dispensing pharmacist must attach this paper prescription to the oral
emergency prescription that had earlier been reduced to writing. For electronic
prescriptions, the pharmacist must annotate the record of the electronic prescription
with the original authorization and date of the oral order. The pharmacist must notify
the nearest office of the Administration if the prescribing individual practitioner fails
to deliver a written prescription to him; failure of the pharmacist to do so shall void
the authority conferred by this paragraph to dispense without a written prescription of
a prescribing individual practitioner.

(5) Central fill pharmacies shall not be authorized under this paragraph to
prepare prescriptions for a controlled substance listed in Schedule II upon receiving
an oral authorization from a retail pharmacist or an individual practitioner.

(e) A prescription prepared in accordance with § 1306.05 written for a
Schedule II narcotic substance to be compounded for the direct administration to a
patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion
may be transmitted by the practitioner or the practitioner's agent to the pharmacy by
facsimile.

The facsimile serves as the original written prescription for purposes of this
paragraph (e) and it shall be maintained in accordance with § 1304.04(h) of this

chapter.

(f) A prescription prepared in accordance with § 1306.05 written for Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

The facsimile serves as the original written prescription for purposes of this paragraph (f) and it shall be maintained in accordance with § 1304.04(h).

COST RECOVERY

48. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

49. **“Alprazolam”** (brand name – **“Xanax”**) is a depressant and a Schedule IV controlled substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is categorized as a dangerous drug pursuant to Section 4022.

50. **“Cefazolin 1 gm Sterile injectable”** (brand name – **“Ancef”**) is a dangerous drug pursuant to Section 4022 and is an antibiotic.

51. **“Fentanyl”** is a Schedule II controlled substance pursuant to Health and Safety Code Section 11055(c)(8) and a dangerous drug pursuant to Business of Professions Code § 4022.

52. **“Norco, Vicodin, Vicodin ES, Lortab, and Lorcet”** are among the brand names for compounds of varying dosages of acetaminophen (aka **“APAP”**) and **Hydrocodone**, a Schedule II controlled substance and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

53. **“Oxycodone”** (brand name – **“Oxycontin”**), is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug pursuant to Code section 4022.

54. **“Promethazine with Codeine”** (brand name – **“Phenergan-Codeine”**) is a dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

BOARD'S INVESTIGATION RELATED TO REPORT OF THEFT
OF CONTROLLED SUBSTANCES FROM PHARMACY

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55. On or about January 4, 2016, the Board received from Respondent Chang, who was, at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence “points to employee pilferage”, but there was no concrete evidence to prove that. In addition, the DEA 106 report and Chang’s written statement indicate additional security measures were instituted by the pharmacy to prevent future loss/theft, including: (1) installing additional video surveillance cameras; (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

56. From February 8, 2016 to February 9, 2016, an analyst with the Board’s Complaint Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated by email with Respondent Chang and another pharmacist employed with Partner Healthcare, Pharmacist Hwang, for the purpose of conducting an audit and records supporting the audit.

57. On February 8, 2016, the Board received an audit spreadsheet and supporting records, including a statement from Pharmacist Hwang dated February 6, 2016, with the following information:

- On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container (500 tablets/container.)
- Reviewing a year of acquisition and disposition records revealed Promethazine with Codeine and Alprazolam 2 mg showed discrepancies.
- An audit period was set by a last controlled substance inventory conducted on July 2, 2014 and an inventory conducted on December 10, 2015.
- There was an ongoing investigation with a detective at the Monrovia Police Department in order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

1 58. The audit records revealed the following information:

- 2 • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about
3 1,775 bottles), based on records from July 2, 2014 to December 10, 2015.
- 4 • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records
5 from July 2, 2014 to December 10, 2015.
- 6 • A beginning inventory was conducted on July 1, 2014 and an ending inventory was
7 conducted on December 10, 2015.
- 8 • Purchasing records and a dispensing history for Alprazolam 2 mg were included.
- 9 • Purchasing records and a dispensing history for Promethazine with Codeine were
10 included.
- 11 • The submitted supporting audit records were reconciled with the spreadsheet and the drug
12 discrepancies.

13 59. From March 31, 2016 to April 12, 2016, Complaint Unit Analyst T.R. and
14 Pharmacist Hwang communicated via email about an employee's theft of drugs from Partner
15 Healthcare. The suspect, former Pharmacy Technician Nestor Sanchez, was identified by the
16 Monrovia Police Department and a criminal case was brought against him.

17 60. On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed
18 door, 24-hour pharmacy servicing skilled nursing facilities (SNF), board and care facilities and
19 hospices, in the presence of Respondent Chang and Pharmacist Hwang. No additional
20 information related to the drug losses was found by the Board's Inspector, who completed the
21 inspection and issued an Inspection Report.

22 61. The Board obtained police reports and court documents related to the criminal case
23 brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which
24 indicated the following:

25 62. On or about January 27, 2016, a law enforcement officer from the Monrovia Police
26 Department met with Pharmacist Hwang, who reported that she discovered a large quantity of
27 medication was missing from Partner Healthcare's drug supply inventory, on November 20, 2014.
28 At that time, Pharmacist Hwang suspected that a Pharmacy Technician, O.B., may have stolen the

1 medications, because he abruptly resigned without providing two-weeks' notice, around the time
2 the pharmacy was auditing its inventory.

3 63. On February 2, 2016, a law enforcement officer from the Monrovia Police
4 Department met with Pharmacist Hwang, who told him that she recalled, in November, 2015, an
5 on-duty pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing
6 from the inventory. Pharmacist Hwang began monitoring her employees and auditing the
7 pharmacy's inventory on a weekly basis. Her audits between November 2014 and November
8 2015 indicated that approximately \$13,278.00 of Codeine cough syrup and Xanax pills were
9 missing from the pharmacy's inventory. Pharmacist Hwang noticed an unusual trend in
10 purchases, in that only one or two items were ordered per purchase form during the graveyard
11 shift, whereas the standard practice for pharmacy purchases was for the on-duty purchaser to open
12 one purchase order at the beginning of the shift and add items to the same purchase order
13 throughout the shift.

14 64. Furthermore, Pharmacist Hwang was informed by employees that an employee
15 (Nestor Sanchez) was bragging about paying \$1,000 for a hotel room in Las Vegas. Pharmacist
16 Hwang also observed that Respondent Sanchez had been coming into work late, working fewer
17 hours each week and leaving work early. Around December 2015, Pharmacist Hwang terminated
18 Sanchez' employment with Partner Healthcare due to his attendance issues. Moreover,
19 Pharmacist Hwang suspected that Sanchez was responsible for the missing Codeine cough syrup
20 and Xanax pills. At that time, Pharmacist Hwang suspected Sanchez may have had assistance
21 from other employees to steal the drugs from Partner Healthcare. However, three employees of
22 Partner Healthcare gave statements to the police and they were ruled out as suspects.

23 65. On or about February 10, 2016, a law enforcement officer with the Monrovia Police
24 Department interviewed Respondent Sanchez, who told him he had worked at Partner Healthcare
25 from April 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015,
26 Sanchez admitted he began stealing two to three bottles of Codeine cough syrup and selling them
27 to his friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his
28 friends. Sanchez stopped stealing in mid-October 2015 because he believed his employer became

1 aware of the shortage in the narcotics inventory. Sanchez told the officer he knew he made bad
2 choices and felt embarrassed. He stole because he was in need of money and acted alone.
3 Sanchez provided the officer with his statement in writing and wrote an apology letter to Partner
4 Healthcare. Based upon the officer's investigation and Sanchez' confession, he believed that
5 Sanchez committed grand theft of medications while employed by Partner Healthcare, for a six-
6 month period of time from April 2015 through October 2015, and the case was referred for
7 criminal prosecution of Sanchez for his crime.

8 66. Between July 2014 and December 2015, Partner Healthcare lost track of a large
9 amount of the inventory of Xanax and Promethazine, which demonstrates that there were no
10 meaningful measures in place during the time in question to prevent the loss, theft or diversion of
11 drugs by employees. The Xanax and Promethazine were on a shelf, not locked up, and there were
12 no cameras surveilling the area where they were placed in the pharmacy. Moreover, there were
13 no adequate policies or procedures in place to prevent pharmacy technicians from ordering these
14 controlled substances and/or taking possession of them upon delivery.

15 **FIRST CAUSE FOR DISCIPLINE**
16 **(Respondent Partner Healthcare - Failure to Maintain**
17 **Effective Control and Security of Dangerous Drugs)**

18 67. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005,
19 4300 and 4301, subdivisions (o) and/or (j), in that Respondent violated California Code of
20 Regulations, title 16, section 1714, subdivision (b) and Code of Federal Regulations, title 21,
21 section 1301.75, subdivision (b), by failing to maintain the pharmacy and its facilities, space,
22 fixtures and/or equipment so that drugs/controlled substances were safely and properly secured,
23 as follows:

24 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to
25 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and
26 Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of
27 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg

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1 showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015.
2 The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

3 **SECOND CAUSE FOR DISCIPLINE**
4 **(Respondent Chang – Failure to Maintain Effective Control and**
5 **Security of Dangerous Drugs/Controlled Substances)**

6 68. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
7 4301, subdivisions (o) and (j), in conjunction with Sections 4036.5, 4105, 4156 and 4113,
8 subdivision (c) and California Code of Regulations, title 16, section 1709.1, subdivision (a), for
9 violating California Code of Regulations, title 16, section 1714, subdivision (d), and Code of
10 Federal Regulations, title 21, section 1301.75, in that, while employed as the PIC of Partner
11 Healthcare, Respondent Chang failed to maintain the pharmacy and its facilities, space, fixtures
12 and/or equipment so that drugs/controlled substances were safely and properly secured, as
13 follows:

14 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to
15 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and
16 Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of
17 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg
18 showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015.
19 The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

20 **THIRD CAUSE FOR DISCIPLINE**
21 **(Respondent Partner Healthcare – Failure to Maintain and/or**
22 **Produce Required Records)**

23 69. Respondent Partner Healthcare is subject to disciplinary action under Sections
24 4005, 4300 and 4301, subdivisions (o) and/or (j), 4105 and 4156, in conjunction with California
25 Code of Regulations, title 16, section 1718, in that Respondent Partner Healthcare violated
26 Sections 4081, subdivision (a) and 4332, by failing to maintain required records and/or produce
27 them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014
28 and December 10, 2015. The allegations set forth above in Paragraphs 55-66 are incorporated by
reference herein.

1 **FOURTH CAUSE FOR DISCIPLINE**
2 **(Respondent Chang –Failure to Maintain and/or Produce**
3 **Maintain Required Records)**

4 70. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
5 4301, subdivisions (o) and/or (j), in conjunction with Section 4036.5, for violating Sections 4081,
6 subdivisions (a) and (b), 4105 and 4332, and California Code of Regulations, title 16, section
7 1709.1, subdivision (a), in that, while employed as PIC of Partner Healthcare, Respondent failed
8 to maintain required records for Partner Healthcare and/or produce them to the Board, for
9 Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015.
10 The allegations set forth above in Paragraphs 55-66 are incorporated by reference herein.

11 **FIFTH CAUSE FOR DISCIPLINE**
12 **(Respondent Sanchez - Conviction of a**
13 **Substantially Related Crime)**

14 71. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
15 (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that
16 Respondent has been convicted of a crime substantially related to the qualifications, functions or
17 duties of a pharmacy technician. On or about July 25, 2016, after pleading nolo contendere,
18 Respondent was convicted of one felony count of violating Penal Code section 487, subdivision
19 (a) [grand theft of personal property] in the criminal proceeding entitled *The People of the State*
20 *of California v. Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse,
21 2016, No. GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles
22 County Jail, placed him on five years' formal probation, and ordered him to pay restitution to the
23 victim, among other terms and conditions. The circumstances surrounding the conviction are set
24 forth above, in Paragraphs 55-66, and are incorporated herein by reference.

25 **SIXTH CAUSE FOR DISCIPLINE**
26 **(Respondent Sanchez - Acts Involving**
27 **Dishonesty, Fraud, or Deceit)**

28 72. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
(f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to substantially
benefit himself, or substantially injure another, when he stole Promethazine with Codeine syrup

1 and Alprazolam 2 mg between approximately April 2015 and October 2015 from his employer, as
2 alleged above in Paragraphs 55-66, which are incorporated herein by reference.

3 **SEVENTH CAUSE FOR DISCIPLINE**
4 **(Respondent Sanchez - Illegal Possession of Prescription**
5 **Drugs Without a Valid Prescription)**

6 73. Respondent Sanchez is subject to disciplinary action under Section 4301,
7 subdivisions (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158,
8 subdivision (a), and 11171, in that, between approximately April 2015 and October 2015,
9 Respondent was in possession of prescription drugs without a valid prescription. Complainant
10 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 55-66.

11 **EIGHTH CAUSE FOR DISCIPLINE**
12 **(Respondent Sanchez – Furnishing Prescription Drugs**
13 **To Others Without a Valid Prescription)**

14 74. Respondent Sanchez is subject to disciplinary action under Section 4301,
15 subdivisions (j) and/or (o), for violating Section 4059, subdivision (a), in that, between
16 approximately April 2015 and October 2015, he illegally sold and/or transferred stolen
17 prescription drugs to his friends, without a valid prescription. Complainant refers to, and by this
18 reference incorporates, the allegations set forth above in Paragraphs 55-66.

19 **NINTH CAUSE FOR DISCIPLINE**
20 **(Respondent Chang - Failure to Exercise or**
21 **Implement Best Professional Judgment)**

22 75. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
23 4301, subdivisions (o) and/or (j), for unprofessional conduct pursuant to Sections 4036.5, 4059,
24 4059.5, 4060, 4081, 4113, subdivision (c), 4301 and 4306.5, subdivisions (a) through (c), in that
25 Respondent, while acting as the PIC of Partner Healthcare, failed to appropriately exercise his
26 education, training, or experience as a pharmacist and failed to exercise or implement his best
27 professional judgment with regard to securing, dispensing, accounting for and/or furnishing the
28 dangerous drugs/controlled substances Alprazolam 2 mg and Promethazine with Codeine syrup
and failed to consult appropriate patient, prescription, and other records for these drugs, as set
forth in Paragraphs 55-66 above, which are incorporated herein by reference.

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TENTH CAUSE FOR DISCIPLINE
(Respondent Partner Healthcare – Failure to Notify Board of Loss of Controlled Substances)

76. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Sections 4156, for violating title 16, California Code of Regulations, section 1715.6, in that Respondent Partner Healthcare failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. The facts supporting this cause are specified in Paragraphs 55-66 above and incorporated herein by reference.

ELEVENTH CAUSE FOR DISCIPLINE
(Respondent Chang – Failure to Notify Board of Loss of Controlled Substances)

77. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4113, subdivision (c), for violating title 16, California Code of Regulations, section 1715.6, in that Respondent failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. On January 4, 2016, Chang reported the loss of controlled substances to the Board; however, he knew or reasonably should have known of the loss of a large quantity of controlled substances/dangerous drugs by no later than November 20, 2015. The facts supporting this cause are specified in Paragraphs 55-66 above and incorporated herein by reference.

FACTS RELATED TO ANNUAL RENEWAL INSPECTION
OF PHARMACY ON AUGUST 1, 2017 AND INVESTIGATION

78. On August 1, 2017, a Board Inspector conducted an annual sterile compounding renewal inspection at Partner Healthcare, located at 2035 S. Myrtle Avenue, Monrovia, CA 91016. The pharmacy is described as a very large “Closed Door” pharmacy providing both sterile compounds and non sterile medications to approximately 4,500 consumers residing in either a skilled nursing facility or assisted living home. Pharmacist Hwang was present and assisted with the inspection.

1 79. In the area where sterile compounding was conducted, the Board’s Inspector opened
2 and inspected the contents stored inside a refrigerator. On one shelf inside was a plastic tote with
3 two dozen, previously frozen, manufacturer prepared Cefazolin 1 gm IVPB (injectable) that were
4 thawed and in liquid form. Each Cefazolin had a sticker on it indicating the expiration date of the
5 product was 9/30/17. However, the manufacturer expiration date on the product label clearly
6 stated “Thawed solution is stable for 30 days under refrigeration and 48 hours at room
7 temperature.”

8 80. Hwang could not explain why each Cefazolin was given a 60-day expiration date.
9 The Board’s Inspector asked Hwang to provide a policy and procedure for thawing frozen
10 antibiotics which she did. The policy and procedure clearly stated the Cefazolin solution was
11 stable for 30 days under refrigeration and 48 hours at room temperature. Hwang was again asked
12 to explain why the Cefazolin were misbranded. She summoned Pharmacy Technician D.M., who
13 stated he placed the expiration date on the Cefazolin bags, but must have inadvertently used an
14 incorrect date.

15 81. The Board’s Inspector discussed with Hwang her findings of the inspection and areas
16 which were noncompliant and for which corrections were issued, including but not limited to the
17 lack of documentation that PIC Chang had reviewed the policies and procedures annually or how
18 the staff were notified of changes to them. The Board’s Inspector requested that Hwang provide
19 her with evidence of an annual quantitative analysis ensuring integrity, potency, quality, and
20 labeled strength. Hwang was able to locate reports from Eagle Analytical Services dated 8/07/15
21 and 7/20/17, but was not able to locate a report indicating the quality assurance review was
22 performed in 2016. Hwang telephoned PIC Chang, and then informed the Board’s Inspector the
23 two reports she presented were the only ones they had.

24 82. At the conclusion of her inspection on August 1, 2017, the Board’s Inspector issued a
25 written notice of noncompliance for the following violations: (1) Section 4342, for drugs which
26 do not conform to the standard and tests as to quality and strength, for having 24 previously
27 frozen Cefazolin 1 gm IVPB found thawed in a refrigerator with an expiration date of 9/30/17
28 affixed, when the manufacturer states the product is only good for 30 days once thawed; and

1 (2) California Code of Regulations, title 16, section 1735.8, subdivision (c), in that documentation
2 provided for the pharmacy indicated a compounded product had quantitative analysis performed
3 on 8/07/15, then on 7/20/17, which showed that the quantitative analysis was not performed on at
4 least an annual basis.

5 83. In the Inspection Report, PIC Chang was requested to fax or email additional
6 documents, including but not limited to revised policies and procedures which reflected
7 compliance with Sections 1735.5, subdivisions (d) & (e) and 1735.8, subdivision (d). On or
8 about August 13, 2017, Chang emailed the Board's Inspector revisions to the pharmacy's sterile
9 compounding policies and procedures.

10 **TWELFTH CAUSE FOR DISCIPLINE**
11 **(Respondent Partner Healthcare – Non-Conforming**
12 **Dangerous Drugs Lacking Quality and Strength)**

13 84. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
14 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating
15 Section 4342, subdivisions (a) and/or (b). The circumstances are that, on or about August 1, 2017,
16 during an inspection by the Board's Inspector at Partner Healthcare there were dangerous drugs, 24
17 previously frozen Cefazolin 1 gm IVPB in stock which were incorrectly labelled with an expiration
18 date of September 30, 2017 (60 days) affixed, when the manufacturer of the product stated the
19 Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth above in greater detail
20 in Paragraphs 78-83, which allegations are incorporated here fully by reference. The 24 thawed
21 Cefazolin 1 gm IVPB did not conform to the standard and tests as to quality and strength, provided
22 in the latest edition of the U.S. Pharmacopoeia or the National Formulary and/or there was a
23 knowing or willful violation of a regulation or regulations adopted pursuant to Section 4006.

24 **THIRTEENTH CAUSE FOR DISCIPLINE**
25 **(Respondent Chang - Non-Conforming Dangerous**
26 **Drugs Lacking Quality and Strength)**

27 85. Respondents PIC Chang is subject to disciplinary action under Sections 4036.5, 4113,
28 subdivision (c), 4300 and 4301, subdivision (o), for violating Section 4342, subdivision (a). The
circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector

1 at Partner Healthcare there were dangerous drugs, 24 previously frozen Cefazolin 1 gm IVPB in
2 stock which were incorrectly labelled with an expiration date of September 30, 2017 (60 days)
3 affixed, when the manufacturer of the product stated the Cefazolin 1 gm IVPB was only good for
4 30 days once thawed, as set forth above in greater detail in Paragraphs 78-83, which allegations are
5 incorporated here fully by reference. The 24 thawed Cefazolin 1 gm IVPB did not conform to the
6 standard and tests as to quality and strength, provided in the latest edition of the U.S.
7 Pharmacopoeia or the National Formulary and/or there was a knowing or willful violation of a
8 regulation or regulations adopted pursuant to Section 4006.

9 86. Pursuant to Section 4113, subdivision (c), Respondent Chang, as the PIC during the
10 relevant time period, is liable for his failure to adequately supervise his employees, and institute
11 and follow adequate policies and procedures to ensure that all compounded drugs and dangerous
12 drugs, including the 24 thawed Cefazolin 1 gm IVPB, were properly labelled, and conformed in
13 quality and strength to the manufacturer's specifications and all applicable state and federal
14 regulations.

15 **FOURTEENTH CAUSE FOR DISCIPLINE**
16 **(Respondent Partner Healthcare - Compounding Quality Assurance)**

17 87. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
18 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating
19 California Code of Regulations, title 16, section 1735.8, subdivision (c), in conjunction with
20 California Code of Regulations, title 16, sections 1735.2, subdivision (h) and 1735.6, subdivision
21 (a). The circumstances are that, on or about August 1, 2017, during an inspection by the Board's
22 Inspector at Partner Healthcare and investigation, it was determined that Respondent did not ensure
23 integrity, potency, quality and labeled strength of dangerous drugs at least once annually, between
24 8/7/15 and 7/20/17, as set forth above in greater detail in Paragraphs 78-83, which allegations are
25 incorporated here fully by reference.

26 **FIFTEENTH CAUSE FOR DISCIPLINE**
27 **(Respondents Chang – Compounding Quality Assurance)**

28 88. Respondent PIC Chang is subject to disciplinary action under sections 4036.5, 4113,
4300 and 4301, subdivision (o), for violating California Code of Regulations, title 16, section

1 1735.8, subdivision (c), in conjunction with California Code of Regulations, title 16, sections
2 1735.2, subdivision (h) and 1735.6, subdivision (a) and Section 4081, subdivision (b). The
3 circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector
4 at Partner Healthcare and investigation, it was determined that Respondent did not ensure integrity,
5 potency, quality and labeled strength of dangerous drugs (24 previously frozen Cefazolin 1 gm
6 IVPB) at least once annually, between 8/7/15 and 7/20/17, as set forth above in greater detail in
7 Paragraphs 78-83, which allegations are incorporated here fully by reference.

8 89. Pursuant to Section 4113, Respondent Chang, as the PIC of the pharmacy during the
9 relevant time period, is liable for his failure and/or that of the pharmacy's employees to ensure
10 integrity, potency, quality and labeled strength of compounded products. The pharmacy's policies
11 and procedures shall be reviewed and such review shall be documented on an annual basis by the
12 PIC. Respondent Chang did not document he reviewed the pharmacy's policies and procedures
13 annually or how staff were notified of any changes to them. The allegations are set forth above in
14 greater detail in Paragraphs 78-83, are incorporated here fully by reference.

15 **FACTS RELATED TO ANNUAL RENEWAL INSPECTION**
16 **OF PHARMACY ON AUGUST 23, 2018 AND INVESTIGATION**

17 90. On August 23, 2018, a Board Inspector conducted an annual sterile compounding
18 inspection, routine inspection, and complaint investigation at Partner Healthcare. The Board had
19 received an anonymous written complaint alleging that Partner Healthcare dispensed Schedule II
20 (CII) controlled substance prescriptions without verifying the prescription(s) with a physician.
21 The complainant alleged the administrators at Highland Palms Healthcare and Arlington Gardens
22 Care Center made it known that the verbal and written controlled substance prescriptions
23 transcribed by nurses did not need to be verified. The complainant alleged this created a loophole
24 for diversion of controlled substances.

25 91. During the inspection on August 23, 2018, Staff Pharmacist A.T., Pharmacist Hwang,
26 and Respondent Chang indicated that the pharmacy dispensed CII controlled substance
27 prescriptions (CII prescriptions) for the skilled nursing facilities (SNF) as follows:
28

1 • The SNF faxed the patient's CII controlled substance orders to the pharmacy, and the
2 order was typed into the computer system by pharmacy processing staff.

3 • The pharmacy technician reduced the CII controlled substance orders to writing onto
4 a pharmacy generated CII controlled substance order form and the prescription was filled.

5 • The pharmacist verified the written order which was reduced to writing by the
6 technician against the faxed order received by the facility. The first time the pharmacist viewed
7 the faxed order request was during the prescription verification process which was after it had
8 already been processed, reduced to writing, and filled.

9 • The pharmacist did not contact the prescriber to verify or validate the requested order
10 before it was filled. After the prescription had been dispensed, the pharmacy-generated CII
11 controlled substances order was faxed to the prescriber/physician, which was usually the
12 following morning.

13 • The CII controlled substance prescription was dispensed to the patient prior to the
14 pharmacy receiving the prescriber's signature for the CII controlled substance order. The
15 pharmacy followed up with subsequent faxes, telephone calls, and text messages to the
16 prescribers to obtain their signature.

17 • The pharmacy typically generated a prescription for an emergency seven-day supply,
18 but only dispensed increments of a three day-supply.

19 92. During the inspection, the Inspector randomly selected and obtained some CII
20 controlled substance orders that were waiting for prescriber signatures, as well as a copy of the
21 facility orders used to initiate the CII controlled substance order, identity of the pharmacist who
22 dispensed the CII controlled substance order, and the patient prescription profile for each of the
23 respective CII controlled substance orders. The following sample of unsigned prescriber CII
24 controlled substances prescription orders were received during the inspection:

Patient	Dispense Date	RX#	Drug	Oral/written/ electronic RX received prior to dispensing	Signed RX received within 7 days
DN	7/3/18	60675427	Hydrocodone/APAP 5/325	No	No
NG	5/15/18	60587986	Hydrocodone/APAP 10/325	No	No

JM	7/18/18	60701924	Hydrocodone/APAP 5/325	No	No
OO	8/3/18	60731152	Hydrocodone/APAP 5/325	No	No
DA	7/18/18	60701384	Hydrocodone/APAP 5/325	No	No
PB	8/4/18	60732757	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60748718	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60749311	Hydrocodone/APAP 5/325	No	No
RD	8/15/18	60750693	Hydrocodone/APAP 10/325	No	No
OM	8/3/18	60730390	Hydrocodone/APAP 10/325	No	No
JM	7/25/18	60714127	Hydrocodone/APAP 5/325	No	No
PR	8/15/18	60750545	Oxycodone/APAP 10/325	No	No

93. None of the CII controlled substance orders were signed by the prescriber, transcribed by the dispensing pharmacist, and no verbal authorization was received by the pharmacist from the prescriber prior to dispensing the CII controlled substance prescriptions. Pharmacist Hwang stated she believed the pharmacy was following the law by using the pharmacy generated CII controlled substance prescription forms for emergency and oral continuation CII orders. Pharmacist Hwang also stated the pharmacy obtained all the required information and followed up by obtaining the signature from the prescriber and signature of nurse upon delivery. Respondent Chang indicated it was difficult to get the prescribers' signatures, and that the pharmacy dispensed the prescription as an emergency to take care of the patient.

94. The Inspector requested and received the following sample of signed prescriber CII controlled substance prescription orders:

Patient	Dispense Date	RX#	Drug	Oral/ written/electronic RI (received prior to dispensing)	Signed RX Received w/in 7 days
SA	7/13/18	60693477	Hydrocodone/APAP 5/325	No	Yes
MA	8/7/18	60736457	Oxycodone 15 mg	No	Yes
TA	8/7/18	60738118	Hydrocodone/APAP 10/325	No	Yes
ED	7/16/18	60696251	Hydrocodone/APAP 10/325	No	Yes
KE	7/23/18	60708719	Hydrocodone/APAP 5/325	No	Yes
LG	7/18/18	60701879	Hydrocodone/APAP 7.5/325	No	Yes
MG	7/19/18	60703802	Hydrocodone/APAP 5/325	No	Yes
SL	7/3/18	60673728	Hydrocodone/APAP 5/325	No	Yes
CM	7/18/18	60702003	Oxycodone 10 mg	No	Yes
AM	7/18/18	60702228	Hydrocodone/APAP 10/325	No	.Yes

AS	7/19/18	60703214	Hydrocodone/APAP 5/325	No	Yes
TT	7/20/18	60706146	Hydrocodone/APAP 5/325	No	Yes
JV	7/21/18	60706467	Hydrocodone/APAP 5/325	No	Yes
TG	8/13/18	60748487	Fentanyl IOO mcg	No	Yes
TG	8/14/18	60749232	Oxycodone 5 mg	No	Yes
HM	8/15/18	60750524	Fentanyl IOO mcg	No	Yes
MM	8/13/18	60747546	Hydrocodone/APAP 5/325	No	Yes

95. None of the CII controlled substance orders were signed by the prescriber or transcribed by the dispensing pharmacist and no verbal authorization was received by the pharmacist from the prescriber before the CII controlled substance prescription was dispensed. Pharmacist Hwang acknowledged during the inspection that the pharmacy serviced the two SNFs, Highland Palms and Arlington Gardens, mentioned in the anonymous complaint to the Board.

96. The Inspector requested Respondent Chang's written statement regarding her written notices of non-compliance with Health and Safety Code section 11167.5, subdivision (a), as it relates to Code of Federal Regulation 1306.11, subdivision (f), for dispensing CII controlled substance prescriptions without first obtaining a verbal or written order from the prescriber and for not obtaining a signed order within seven days. In addition, the Inspector requested that Respondent Chang provide information about the pharmacy's policies, procedures and protocols.

97. In response, on September 13, 2018, Respondent Chang e-mailed the Inspector his written statement, which is summarized as follows:

- Partner Healthcare provided prescription service to several SNFs, which included regularly filling around 3,500 prescriptions daily, of which 250-300 are new and refill orders for CII controlled substance medications. Most of these orders were for patients recently discharged from hospitals after surgery and transferred to SNFs for recovery and rehabilitation and under pain management therapy.
- Partner Healthcare's standard procedure was to receive authorization from the facility/attending prescriber before dispensing CII controlled substances, either through a signed order or verbal order. However, the pharmacy had an outstanding verbal authorization from the SNF medical directors allowing the pharmacy to dispense a reasonable amount of medications, including controlled substances, to patients discharged from hospitals into the SNF. This arrangement was due to the practical difficulty of contacting prescribers after hours, which was when these transactions mainly occurred.

- 1 • The current protocol required the pharmacy to reach out to the SNFs to
2 get a copy of the patient's discharge order. The pharmacist reviewed the
3 order and it served as the basis in determining the patient's need for
4 continuity of care and the appropriateness of the drug, strength, dose,
5 and quantity to be given to the patient. The pharmacy always followed
6 these procedures for SNF patients and never dispensed any controlled
7 substance or any prescription without the prescriber's (or medical
8 director's) consent.

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SIXTEENTH CAUSE FOR DISCIPLINE
**(Respondents Partner Healthcare and Chang -
Dispensed Emergency Prescriptions For CII Controlled
Substances Without A Physician's Order)**

98. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary action under Sections 4301, subdivisions (o) and/or (j) and 4113, subdivision (c), in conjunction with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Health and Safety Code section 11167, subdivisions (a)-(d), by dispensing emergency prescriptions for CII controlled substances to patients at SNFs without a valid written electronic or oral order from the physician prior to dispensing, and by failing to obtain a signed written order from the physician within seven days of dispensing the CII controlled substances, in 2018, as set forth above in Paragraphs 90-97, which are incorporated by reference.

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SEVENTEENTH CAUSE FOR DISCIPLINE
**(Respondents Partner Healthcare and Chang -
Dispensed CII Controlled Substance
Without A Physician's Order)**

99. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary action under Sections 4301, subdivisions (o) and/or (j), and 4113, subdivision (c), in conjunction with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Code of Federal Regulations, title 21, section 1306.11, subdivisions (c)-(f) and Health and Safety Code section 11167.5, subdivision (a), by dispensing prescriptions for CII controlled substances to patients at SNFs without first obtaining a valid electronic or written order from the physician, as set forth above in Paragraphs 90-97, which are incorporated by reference.

1 **OTHER MATTERS**

2 100. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
3 Number PHY 51078 issued to Partner Healthcare Inc., Partner Healthcare Inc. shall be prohibited
4 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
5 of a licensee for five years if Pharmacy Permit Number PHY 51078 is placed on probation or
6 until Pharmacy Permit Number PHY 51078 is reinstated if it is revoked.

7 **DISCIPLINE CONSIDERATIONS**

8 101. To determine the degree of discipline, Complainant alleges as follows:

9 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014
10 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the
11 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in
12 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the
13 citation. The citation was paid in full and became the final order.

14 b. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
15 65972 against Respondent Partner Healthcare for failing to prevent the sale of drugs lacking in
16 quality and for taking back medications from assisted living facilities and placing them into
17 containers to be dispensed to other patients, in violation of Section 4342, subdivision (a) and
18 Health and Safety Code section 111440. A fine in the amount of \$2,000 was issued with the
19 citation. The citation was paid in full and became the final order.

20 c. On or about February 24, 2016, the Board issued administrative Citation No. CI 2015
21 69197 against Respondent Henry Hung Yat Chang for failing to ensure that he, as PIC for Partner
22 Healthcare, did not exceed the pharmacist to pharmacy technician ratio of 2:1 between June 14,
23 2015 and June 20, 2015, in violation of Section 4115, subdivision (f)(1). A fine in the amount of
24 \$5,000 was issued with the citation. The citation was paid in full and became the final order.

25 d. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
26 65972 against Respondent Henry Hung Yat Chang for failing to prevent the sale of drugs lacking

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1 in quality and for taking back medications from assisted living facilities and placing them into
2 containers to be dispensed to other patients, while he was PIC for Partner Healthcare, in violation
3 of Section 4342, subdivision (a) and Health and Safety Code section 111440. A fine in the
4 amount of \$2,000 was issued with the citation. The citation was paid in full and became the final
5 order.

6 **PRAYER**

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

9 1. Revoking or suspending Pharmacy Permit Number PHY 51078, issued to Partner
10 Healthcare, Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner;

11 2. Revoking or suspending Pharmacist Permit Number RPH 53723, issued to Henry
12 Hung Yat Chang;

13 3. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,
14 issued to Nestor Daniel Sanchez;

15 4. Prohibiting Partner Healthcare, Inc from serving as a manager, administrator, owner,
16 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
17 Number PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is
18 reinstated if Pharmacy Permit Number PHY 51078 issued to Partner Healthcare, Inc. is revoked.

19 5. Ordering Partner Healthcare Inc., Henry Hung Yat Chang, and Nestor Sanchez,
20 jointly and severally, to pay the Board of Pharmacy the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

23
24 DATED: August 16, 2019



25 ANNE SODERGREN
26 Interim Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

LA2017604797; 53657287

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7

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

11 In the Matter of the Accusation Against:

Case No. 6176

12 **PARTNER HEALTHCARE, INC.; HENRY**
13 **HUNG YAT CHANG; KHANH-LONG**
14 **THAI; AMMIE HWANG; BRIAN**
15 **GARNER**
16 **2035 S. Myrtle Ave.**
17 **Monrovia, CA 91016**

THIRD AMENDED ACCUSATION

Pharmacy Permit No. PHY 51078

18 AND

19 **PARTNER HEALTHCARE, INC.; HENRY**
20 **HUNG YAT CHANG; KHANH-LONG**
21 **THAI; AMMIE HWANG; BRIAN**
22 **GARNER, OWNERS**
23 **2035 S. Myrtle Ave.**
24 **Monrovia, CA 91016**

Licensing Sterile Compounding No. LSC
25 **99777**

26 AND

27 **HENRY HUNG YAT CHANG**
28 **2035 S. Myrtle Ave.**
Monrovia, CA 91016

Pharmacist License No. RPH 53723

AND

1 **NESTOR DANIEL SANCHEZ**
2 **13728 Olive St.**
3 **Baldwin Park, CA 91706**

4 **Pharmacy Technician Registration No. TCH**
5 **123802**

6 Respondent.

7 Complainant alleges:

8 **PARTIES**

9 1. Anne Sodergren (Complainant) brings this Third Amended Accusation (Accusation)
10 solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board),
11 Department of Consumer Affairs.

12 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078
13 to Partner Healthcare Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian
14 Garner, Owners (Respondent and/or Partner Healthcare and/or the pharmacy). The Pharmacy
15 Permit was in full force and effect at all times relevant to the charges brought herein and will
16 expire on October 1, 2019, unless renewed.

17 3. On or about April 12, 2013, the Board issued Sterile Compounding Permit Number
18 LSC 99777 to Partner Healthcare Inc. doing business as Partner Healthcare Inc.; Henry Hung Yat
19 Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner, Owners (Respondent). The Sterile
20 Compounding Permit was in full force and effect at all times relevant to the charges brought
21 herein and will expire on October 31, 2019, unless renewed.

22 4. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
23 53723 to Henry Hung Yat Chang (Respondent). The Pharmacist License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on October 31, 2019,
25 unless renewed. Chang is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since
26 October 2, 2012.

27 5. On or about August 28, 2002, the Board issued Pharmacist License Number RPH
28 53940 to Ammie Hwang (Respondent). The Pharmacist License was in full force and effect at all
times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

1 Hwang is and has been the Treasurer/Chief Financial Officer of the pharmacy since July 19,
2 2013.

3 6. On or about April 12, 2002, the Board issued Pharmacist License Number RPH
4 53680 to Brian Tracy Garner (Respondent). The Pharmacist License was in full force and effect
5 at all times relevant to the charges brought herein and will expire on April 30, 2020, unless
6 renewed. Garner is and has been the Vice President and 32% shareholder of the pharmacy since
7 October 2, 2012.

8 7. On or about September 23, 2002, the Board issued Pharmacist License Number RPH
9 53678 to Khanh-Long Thai (Respondent). The Pharmacist License was in full force and effect at
10 all times relevant to the charges brought herein and will expire on December 31, 2019, unless
11 renewed. Thai is and has been the Chief Executive Officer and President and 52% shareholder of
12 the pharmacy since July 19, 2013.

13 8. On or about May 24, 2012, the Board issued Pharmacy Technician Registration
14 Number TCH 123802 to Nestor Daniel Sanchez (Respondent). The Pharmacy Technician
15 Registration was in full force and effect at all times relevant to the charges brought herein and
16 expired on December 31, 2017.

17 **JURISDICTION**

18 9. This Accusation is brought before the Board, under the authority of the following
19 laws. All section references are to the Business and Professions Code unless otherwise indicated.

20 10. Under Section 4300, the Board may discipline any license, for any reason provided in
21 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

22 11. Section 4300.1 states:

23 The expiration, cancellation, forfeiture, or suspension of a board-issued license
24 by operation of law or by order or decision of the board or a court of law, the
25 placement of a license on a retired status, or the voluntary surrender of a license by a
26 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.

27 12. Section 4402, subdivision (a) provides that any pharmacist license that is not
28 renewed within three years following its expiration may not be renewed, restored, or reinstated

1 and shall be canceled by operation of law at the end of the three-year period. Under Section
2 4402, subdivision (d), the Board has authority to proceed with an accusation that has been filed
3 prior to the expiration of the three-year period.

4 **STATUTORY PROVISIONS**

5 13. Section 490 states, in pertinent part:

6 (a) In addition to any other action that a board is permitted to take against a
7 licensee, a board may suspend or revoke a license on the ground that the licensee has
8 been convicted of a crime, if the crime is substantially related to the qualifications,
9 functions, or duties of the business or profession for which the license was issued.

10 (b) Notwithstanding any other provision of law, a board may exercise any
11 authority to discipline a licensee for conviction of a crime that is independent of the
12 authority granted under subdivision (a) only if the crime is substantially related to the
13 qualifications, functions, or duties of the business or profession for which the
14 licensee's license was issued.

15 (c) A conviction within the meaning of this section means a plea or verdict of
16 guilty or a conviction following a plea of nolo contendere. An action that a board is
17 permitted to take following the establishment of a conviction may be taken when the
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on
19 appeal, or when an order granting probation is made suspending the imposition of
20 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

21 (d) The Legislature hereby finds and declares that the application of this section
22 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
23 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
24 number of statutes and regulations in question, resulting in potential harm to the
25 consumers of California from licensees who have been convicted of crimes.
26 Therefore, the Legislature finds and declares that this section establishes an
27 independent basis for a board to impose discipline upon a licensee, and that the
28 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

14. Section 4005 allows the Board to adopt rules and regulations as may be necessary for
the protection of the public, as follows:

[F]or the proper and more effective enforcement and administration of this
chapter; pertaining to the practice of pharmacy; . . . pertaining to persons and
establishments licensed under this chapter; pertaining to establishments wherein
any drug . . . is compounded, prepared, furnished, or dispensed; providing for
standards of minimum equipment for establishments licensed under this chapter. . .

15. Section 4006 provides as follows:

The board may adopt regulations consistent with this chapter and Section
111485 of the Health and Safety Code or regulations adopted thereunder, limiting
or restricting the furnishing of a particular drug upon a finding that the otherwise
unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the
public health or safety.

1 16. Section 4007 provides, in relevant part, that: “(b) . . . [R]ules and regulations may
2 require that the function be performed only under the effective supervision of a pharmacist who
3 shall have the overall responsibility for supervising all activities that take place in the pharmacy.”

4 17. Section 4021 sets forth that “‘Controlled substance’ means any substance listed in
5 Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

6 Section 4022 states, in pertinent part:

7 “Dangerous drug” or “dangerous device” means any drug or device unsafe
8 for self-use in humans or animals, and includes the following:

9 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
10 without prescription,” “Rx only,” or words of similar import.

11 (b) Any device that bears the statement: “Caution: federal law restricts this
12 device to sale by or on the order of a _____,” “Rx only,” or words of similar
13 import, the blank to be filled in with the designation of the practitioner licensed to
14 use or order use of the device.

15 (c) Any other drug or device that by federal or state law can be lawfully
16 dispensed only on prescription or furnished pursuant to Section 4006.

17 18. Section 4036.5 states that “‘Pharmacist-in-charge’ means a pharmacist proposed by a
18 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
19 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice
20 of pharmacy.”

21 19. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous
22 drug or dangerous device except upon the prescription of an authorized prescriber.

23 20. Section 4060 states, in pertinent part:

24 No person shall possess any controlled substance, except that furnished to a
25 person upon the prescription of a physician, dentist, podiatrist, optometrist,
26 veterinarian, or naturopathic doctor . . . This section shall not apply to the possession
27 of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
28 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
correctly labeled with the name and address of the supplier or producer.

 21. Section 4081 provides, in relevant part, that:

 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
disposition of dangerous drugs...

 (b) The owner, officer, or partner of a pharmacy ... shall be jointly responsible,
with the pharmacist-in-charge, responsible manager ... for maintaining the records

and inventory described in this section.

22. Section 4105 states, in pertinent part, that “(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.”

23. Section 4113 states, in pertinent part, that: “(c) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.”

24. Section 4156 states as follows:

A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the act would constitute unprofessional conduct under any statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be bound by the laws and regulations that apply to a person licensed under this chapter.

25. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

* * * *

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

* * * *

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to

1 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

2 * * * *

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
4 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
5 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

6 26. Section 4302 of the Code states:

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

10 27. Section 4306.5 provides, in pertinent part, that:

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

12 (a) Acts or omissions that involve, in whole or in part, the inappropriate
13 exercise of his or her education, training, or experience as a pharmacist, whether or
not the act or omission arises in the course of the practice of pharmacy or the
14 ownership, management, administration, or operation of a pharmacy or other entity
licensed by the board.

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

18 (c) Acts of omissions that involve, in whole or in part, the failure to consult
appropriate patient, prescription, and other records pertaining to the performance
19 of any pharmacy function.

20 (d) Acts of omissions that involve, in whole or in part, the failure to fully
maintain and retain appropriate patient-specific information pertaining to the
21 performance of any pharmacy function.

22 28. Section 4307 of the Code states that:

23 (a) Any person who has been denied a license or whose license has been
24 revoked or is under suspension, or who has failed to renew his or her license while it
was under suspension, or who has been a manager, administrator, owner member,
25 officer, director, associate, or partner of any partnership, corporation, firm, or
association whose application for a license has been denied or revoked, is under
26 suspension or has been placed on probation, and while acting as the manger,
administrator, owner, member, officer, director, associate, or partner had knowledge
27 or knowingly participated in any conduct for which the license was denied, revoked,
suspended, or placed on probation, shall be prohibited from serving as a manger,
28 administrator, owner, member, officer, director, associate, or partner of a licensee as
follows:

1 (1) Where a probationary license is issued or where an existing license is placed
2 on probation, this prohibition shall remain in effect for a period not to exceed five
3 years.

4 (2) Where the license is denied or revoked, the prohibition shall continue until
5 the license is issued or reinstated.

6 (b) Manager, administrator, owner, member, officer, director, associate,
7 partner, or any other person with management or control of a license as used in this
8 section and Section 4308, may refer to a pharmacist or to any other person who
9 serves in such capacity in or for a licensee.

10 29. Section 4332, subdivision (a), states, in relevant part:

11 Any person who fails, neglects, or refuses to maintain the records required by
12 Section 4081 or who, when called upon by an authorized officer or a member of the
13 board, fails, neglects, or refuses to produce or provide the records within a reasonable
14 time, or who willfully produces or furnishes records that are false, is guilty of a
15 misdemeanor.

16 30. Section 4342 provides, in relevant part, that:

17 (a) The board may institute any action or actions as may be provided by law
18 and that, in its discretion, are necessary, to prevent the sale of pharmaceutical
19 preparations and drugs that do not conform to the standard and tests as to quality and
20 strength, provided in the latest edition of the United States Pharmacopoeia or the
21 National Formulary, or that violate any provision of the Sherman Food, Drug and
22 Cosmetic Law...

23 (b) Any knowing or willful violation of any regulation adopted pursuant to
24 Section 4006 shall be subject to punishment in the same manner as is provided in
25 Sections 4321 and 4336.

26 31. Health and Safety Code section 11158, subdivision (a), states:

27 Except as provided in Section 11159 or in subdivision (b) of this section, no
28 controlled substance classified in Schedule II shall be dispensed without a
prescription meeting the requirements of this chapter. Except as provided in
Section 11159 or when dispensed directly to an ultimate user by a practitioner,
other than a pharmacist or pharmacy, no controlled substance classified in
Schedule III, IV, or V may be dispensed without a prescription meeting the
requirements of this chapter.

32. Health and Safety Code section 11167 states, in pertinent part:

Notwithstanding subdivision (a) of Section 11164, in an emergency where
failure to issue a prescription may result in loss of life or intense suffering, an order
for a controlled substance may be dispensed on an oral order, an electronic data
transmission order, or a written order not made on a controlled substance form as
specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section
11164.

1 (b) Any written order is signed and dated by the prescriber in ink, and the
2 pharmacy reduces any oral or electronic data transmission order to hard copy form
3 prior to dispensing the controlled substance.

4 (c) The prescriber provides a written prescription on a controlled substance
5 prescription form that meets the requirements of Section 11162.1, by the seventh day
6 following the transmission of the initial order; a postmark by the seventh day
7 following transmission of the initial order shall constitute compliance.

8 (d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so
9 notify the Department of Justice in writing within 144 hours of the prescriber's failure
10 to do so and shall make and retain a hard copy, readily retrievable record of the
11 prescription, including the date and method of notification of the Department of
12 Justice.

13 (e) This section shall become operative on January 1, 2005.

14 33. Health and Safety Code section 11167.5 states:

15 (a) An order for a controlled substance classified in Schedule II for a patient
16 of a licensed skilled nursing facility, a licensed intermediate care facility, a licensed
17 home health agency, or a licensed hospice may be dispensed upon an oral or
18 electronically transmitted prescription. If the prescription is transmitted orally, the
19 pharmacist shall, prior to filling the prescription, reduce the prescription to writing in
20 ink in the handwriting of the pharmacist on a form developed by the pharmacy for
21 this purpose. If the prescription is transmitted electronically, the pharmacist shall,
22 prior to filling the prescription, produce, sign, and date a hard copy prescription. The
23 prescriptions shall contain the date the prescription was orally or electronically
24 transmitted by the prescriber, the name of the person for whom the prescription was
25 authorized, the name and address of the licensed skilled nursing facility, licensed
26 intermediate care facility, licensed home health agency, or licensed hospice in which
27 that person is a patient, the name and quantity of the controlled substance prescribed,
28 the directions for use, and the name, address, category of professional licensure,
license number, and federal controlled substance registration number of the
prescriber. The original shall be properly endorsed by the pharmacist with the
pharmacy's state license number, the name and address of the pharmacy, and the
signature of the person who received the controlled substances for the licensed skilled
nursing facility, licensed intermediate care facility, licensed home health agency, or
licensed hospice. A licensed skilled nursing facility, a licensed intermediate care
facility, a licensed home health agency, or a licensed hospice shall forward to the
dispensing pharmacist a copy of any signed telephone orders, chart orders, or related
documentation substantiating each oral or electronically transmitted prescription
transaction under this section.

(b) This section shall become operative on July 1, 2004.

34. Health and Safety Code section 11171 provides that no person shall prescribe,
administer, or furnish a controlled substance except under the conditions and in the manner
provided by this division.

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REGULATORY PROVISIONS

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35. California Code of Regulations, title 16, section 1707.3 sets forth that: “Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and medication record before each prescription drug is delivered. The review shall include screening for severe potential drug therapy problems.”

36. California Code of Regulations, title 16, section 1709.1 provides that: “(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.”

37. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) provides that:

* * * *

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

* * * *

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

38. California Code of Regulations, title 16, section 1715.6, provides that: “The owner shall report to the Board within thirty (30) days of discovery of any loss of the controlled substances, including their amounts and strengths.”

39. California Code of Regulations, title 16, section 1716, provides that:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.”

1 40. California Code of Regulations, title 16, section 1718, provides that:

2 “Current Inventory” as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

5 The controlled substances inventories required by Title 21, CFR, Section 1304
6 shall be available for inspection upon request for at least 3 years after the date of the
7 inventory.

8 41. California Code of Regulations section 1735 states, in part,

9 (a) “Compounding” means any of the following activities occurring in a
10 licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant
11 to a prescription:

12 (1) Altering the dosage form or delivery system of a drug.

13 42. California Code of Regulations, title 16, section 1735.2, subdivision (h), states:

14 Every compounded drug product shall be given an expiration date representing
15 the date beyond which, in the professional judgment of the pharmacist performing or
16 supervising the compounding, it should not be used. This “beyond use date” of the
17 compounded drug product shall not exceed 180 days from preparation or the shortest
18 expiration date of any component in the compounded drug product, unless a longer
19 date is supported by stability studies of finished drugs or compounded drug products
20 using the same components and packaging. Shorter dating than set forth in this
21 subsection may be used if it is deemed appropriate in the professional judgment of the
22 responsible pharmacist.

23 43. California Code of Regulations, title 16, section 1735.4, subdivision (b), states:

24 “A statement that the drug has been compounded by the pharmacy shall be included on the
25 container or on the receipt provided to the patient.”

26 44. California Code of Regulations, title 16, section 1735.6, subdivision (a), states:

27 “Any pharmacy engaged in compounding shall maintain written documentation regarding
28 the facilities and equipment necessary for safe and accurate compounded drug products. Where
applicable, this shall include records of certification(s) of facilities or equipment.”

45. California Code of Regulations, title 16, section 1735.8, states, in pertinent part:

(a) Any pharmacy engaged in compounding shall maintain, as part of its written
policies and procedures, a written quality assurance plan designed to monitor and
ensure the integrity, potency, quality, and labeled strength of compounded drug
preparations.

(b) The quality assurance plan shall include written procedures for verification,
monitoring, and review of the adequacy of the compounding processes and shall also
include written documentation of review of those processes by qualified pharmacy
personnel.

1 (c) The quality assurance plan shall include written standards for qualitative and
2 quantitative analysis of compounded drug preparations to ensure integrity, potency,
3 quality, and labeled strength, including the frequency of testing. All qualitative and
4 quantitative analysis reports for compounded drug preparations shall be retained by
the pharmacy and maintained along with the compounding log and master formula
document. The quality assurance plan shall include a schedule for routine testing and
analysis of specified compounded drug preparations to ensure integrity, potency,
quality, and labeled strength, on at least an annual basis.

5 (d) The quality assurance plan shall include a written procedure for scheduled
6 action in the event any compounded drug product is ever discovered to be below
minimum standards for integrity, potency, quality, or labeled strength.

7 46. California Code of Regulations, title 16, section 1770, states, in pertinent part:

8 For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
10 Professions Code, a crime or act shall be considered substantially related to the
11 qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

12 47. California Code of Regulations, title 16, section 1793.7, subdivision (d), states:

13 Any pharmacy employing or using a pharmacy technician shall develop a job
14 description and written policies and procedures adequate to ensure compliance with
15 the provisions of Article 11 of this Chapter, and shall maintain, for at least three years
from the time of making, records adequate to establish compliance with these sections
and written policies and procedures.

16 48. Code of Federal Regulations, title 21, section 1301.75 sets forth, in pertinent part:

17 * * * *

18 (b) Controlled substances listed in Schedules II, III, IV, and V shall be
19 stored in a securely locked, substantially constructed cabinet. However,
20 pharmacies and institutional practitioners may disperse such substances throughout
the stock of noncontrolled substances in such a manner as to obstruct the theft or
diversion of the controlled substances.

21 * * * *

22 49. Code of Federal Regulations, title 21, section 1304.11, subdivision (c), states:

23 “Biennial inventory date. After the initial inventory is taken, the registrant shall take a new
24 inventory of all stocks of controlled substances on hand at least every two years. The biennial
25 inventory may be taken on any date which is within two years of the previous biennial inventory
26 date.”

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1 50. Code of Federal Regulations, title 21, section 1306.11, provides:

2 (a) A pharmacist may dispense directly a controlled substance listed in
3 Schedule II that is a prescription drug as determined under section 503 of the Federal
4 Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) only pursuant to a written
5 prescription signed by the practitioner, except as provided in paragraph (d) of this
6 section. A paper prescription for a Schedule II controlled substance may be
7 transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile
8 equipment, provided that the original manually signed prescription is presented to the
9 pharmacist for review prior to the actual dispensing of the controlled substance,
10 except as noted in paragraph (e), (f), or (g) of this section. The original prescription
11 shall be maintained in accordance with § 1304.04(h) of this chapter.

12 (b) An individual practitioner may administer or dispense directly a controlled
13 substance listed in Schedule II in the course of his professional practice without a
14 prescription, subject to § 1306.07.

15 (c) An institutional practitioner may administer or dispense directly (but not
16 prescribe) a controlled substance listed in Schedule II only pursuant to a written
17 prescription signed by the prescribing individual practitioner or to an order for
18 medication made by an individual practitioner that is dispensed for immediate
19 administration to the ultimate user.

20 (d) In the case of an emergency situation, as defined by the Secretary in §
21 290.10 of this title, a pharmacist may dispense a controlled substance listed in
22 Schedule II upon receiving oral authorization of a prescribing individual practitioner,
23 provided that:

24 (1) The quantity prescribed and dispensed is limited to the amount adequate to
25 treat the patient during the emergency period (dispensing beyond the emergency
26 period must be pursuant to a paper or electronic prescription signed by the prescribing
27 individual practitioner);

28 (2) The prescription shall be immediately reduced to writing by the
pharmacist and shall contain all information required in § 1306.05, except for the
signature of the prescribing individual practitioner;

(3) If the prescribing individual practitioner is not known to the pharmacist, he
must make a reasonable effort to determine that the oral authorization came from a
registered individual practitioner, which may include a callback to the prescribing
individual practitioner using his phone number as listed in the telephone directory
and/or other good faith efforts to insure his identity; and

(4) Within 7 days after authorizing an emergency oral prescription, the
prescribing individual practitioner shall cause a written prescription for the
emergency quantity prescribed to be delivered to the dispensing pharmacist. In
addition to conforming to the requirements of § 1306.05, the prescription shall have
written on its face "Authorization for Emergency Dispensing," and the date of the
oral order. The paper prescription may be delivered to the pharmacist in person or by
mail, but if delivered by mail it must be postmarked within the 7-day period. Upon
receipt, the dispensing pharmacist must attach this paper prescription to the oral
emergency prescription that had earlier been reduced to writing. For electronic
prescriptions, the pharmacist must annotate the record of the electronic prescription
with the original authorization and date of the oral order. The pharmacist must notify
the nearest office of the Administration if the prescribing individual practitioner fails

1 to deliver a written prescription to him; failure of the pharmacist to do so shall void
2 the authority conferred by this paragraph to dispense without a written prescription of
3 a prescribing individual practitioner.

4 (5) Central fill pharmacies shall not be authorized under this paragraph to
5 prepare prescriptions for a controlled substance listed in Schedule II upon receiving
6 an oral authorization from a retail pharmacist or an individual practitioner.

7 (e) A prescription prepared in accordance with § 1306.05 written for a
8 Schedule II narcotic substance to be compounded for the direct administration to a
9 patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion
10 may be transmitted by the practitioner or the practitioner's agent to the pharmacy by
11 facsimile.

12 The facsimile serves as the original written prescription for purposes of this
13 paragraph (e) and it shall be maintained in accordance with § 1304.04(h) of this
14 chapter.

15 (f) A prescription prepared in accordance with § 1306.05 written for Schedule
16 II substance for a resident of a Long Term Care Facility may be transmitted by the
17 practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

18 The facsimile serves as the original written prescription for purposes of this
19 paragraph (f) and it shall be maintained in accordance with § 1304.04(h).

20 **COST RECOVERY**

21 51. Section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation of the licensing
23 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

24 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

25 52. **“Alprazolam”** (brand name – **“Xanax”**) is a depressant and a Schedule IV controlled
26 substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is
27 categorized as a dangerous drug pursuant to Section 4022.

28 53. **“Cefazolin 1 gm Sterile injectable”** (brand name – **“Ancef”**) is a dangerous drug
pursuant to Section 4022 and is an antibiotic.

54. **“Fentanyl”** is a Schedule II controlled substance pursuant to Health and Safety Code
Section 11055(c)(8) and a dangerous drug pursuant to Business of Professions Code § 4022.

55. **“Norco, Vicodin, Vicodin ES, Lortab, and Lorcet”** are among the brand names for
compounds of varying dosages of acetaminophen (aka **“APAP”**) and **Hydrocodone**, a Schedule
II controlled substance and dangerous drug as designated by Business and Professions Code

1 section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**.
2 These are all narcotic drugs.

3 56. “**Oxycodone**” (brand name – “**Oxycontin**”), is a Schedule II controlled substance
4 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug
5 pursuant to Code section 4022.

6 57. “**Promethazine with Codeine**” (brand name – “**Phenergan-Codeine**”) is a
7 dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code
8 section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

9 **BOARD’S INVESTIGATION RELATED TO REPORT OF THEFT**
10 **OF CONTROLLED SUBSTANCES FROM PHARMACY**

11 58. On or about January 4, 2016, the Board received from Respondent Chang, who was,
12 at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written
13 statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The
14 DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and
15 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence “points to employee
16 pilferage”, but there was no concrete evidence to prove that. In addition, the DEA 106 report and
17 Chang’s written statement indicate additional security measures were instituted by the pharmacy
18 to prevent future loss/theft, including: (1) installing additional video surveillance cameras;
19 (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all
20 controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

21 59. From February 8, 2016 to February 9, 2016, an analyst with the Board’s Complaint
22 Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated
23 by email with Respondent Chang and another pharmacist employed with Partner Healthcare,
24 Respondent Hwang, for the purpose of conducting an audit and records supporting the audit.

25 60. On February 8, 2016, the Board received an audit spreadsheet and supporting
26 records, including a statement from Pharmacist Hwang dated February 6, 2016, with the
27 following information:
28

1 • On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container
2 (500 tablets/container.)

3 • Reviewing a year of acquisition and disposition records revealed Promethazine with
4 Codeine and Alprazolam 2 mg showed discrepancies.

5 • An audit period was set by a last controlled substance inventory conducted on July 2,
6 2014 and an inventory conducted on December 10, 2015.

7 • There was an ongoing investigation with a detective at the Monrovia Police Department in
8 order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

9 61. The audit records revealed the following information:

10 • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about
11 1,775 bottles), based on records from July 2, 2014 to December 10, 2015.

12 • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records
13 from July 2, 2014 to December 10, 2015.

14 • A beginning inventory was conducted on July 1, 2014 and an ending inventory was
15 conducted on December 10, 2015.

16 • Purchasing records and a dispensing history for Alprazolam 2 mg were included.

17 • Purchasing records and a dispensing history for Promethazine with Codeine were
18 included.

19 • The submitted supporting audit records were reconciled with the spreadsheet and the drug
20 discrepancies.

21 62. From March 31, 2016 to April 12, 2016, Complaint Unit Analyst T.R. and
22 Respondent Hwang communicated via email about an employee's theft of drugs from Partner
23 Healthcare. The suspect, former Pharmacy Technician Nestor Sanchez, was identified by the
24 Monrovia Police Department and a criminal case was brought against him.

25 63. On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed
26 door, 24-hour pharmacy servicing skilled nursing facilities (SNF), board and care facilities and
27 hospices, in the presence of Respondent Chang and Respondent Hwang. No additional
28

1 information related to the drug losses was found by the Board's Inspector, who completed the
2 inspection and issued an Inspection Report.

3 64. The Board obtained police reports and court documents related to the criminal case
4 brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which
5 indicated the following:

6 65. On or about January 27, 2016, a law enforcement officer from the Monrovia Police
7 Department met with Respondent Hwang, who reported that she discovered a large quantity of
8 medication was missing from Partner Healthcare's drug supply inventory, on November 20, 2014.
9 At that time, Respondent Hwang suspected that a Pharmacy Technician, O.B., may have stolen
10 the medications, because he abruptly resigned without providing two-weeks' notice, around the
11 time the pharmacy was auditing its inventory.

12 66. On February 2, 2016, a law enforcement officer from the Monrovia Police
13 Department met with Respondent Hwang, who told him that she recalled, in November, 2015, an
14 on-duty pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing
15 from the inventory. Respondent Hwang began monitoring her employees and auditing the
16 pharmacy's inventory on a weekly basis. Her audits between November 2014 and November
17 2015 indicated that approximately \$13,278.00 of Codeine cough syrup and Xanax pills were
18 missing from the pharmacy's inventory. Respondent Hwang noticed an unusual trend in
19 purchases, in that only one or two items were ordered per purchase form during the graveyard
20 shift, whereas the standard practice for pharmacy purchases was for the on-duty purchaser to open
21 one purchase order at the beginning of the shift and add items to the same purchase order
22 throughout the shift.

23 67. Furthermore, Respondent Hwang was informed by employees that an employee
24 (Nestor Sanchez) was bragging about paying \$1,000 for a hotel room in Las Vegas. Respondent
25 Hwang also observed that Respondent Sanchez had been coming into work late, working fewer
26 hours each week and leaving work early. Around December 2015, Respondent Hwang
27 terminated Sanchez' employment with Partner Healthcare due to his attendance issues.
28 Moreover, Respondent Hwang suspected that Sanchez was responsible for the missing Codeine

1 cough syrup and Xanax pills. At that time, Respondent Hwang suspected Sanchez may have had
2 assistance from other employees to steal the drugs from Partner Healthcare. However, three
3 employees of Partner Healthcare gave statements to the police and they were ruled out as
4 suspects.

5 68. On or about February 10, 2016, a law enforcement officer with the Monrovia Police
6 Department interviewed Respondent Sanchez, who told him he had worked at Partner Healthcare
7 from April 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015,
8 Sanchez admitted he began stealing two to three bottles of Codeine cough syrup and selling them
9 to his friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his
10 friends. Sanchez stopped stealing in mid-October 2015 because he believed his employer became
11 aware of the shortage in the narcotics inventory. Sanchez told the officer he knew he made bad
12 choices and felt embarrassed. He stole because he was in need of money and acted alone.
13 Sanchez provided the officer with his statement in writing and wrote an apology letter to Partner
14 Healthcare. Based upon the officer's investigation and Sanchez' confession, he believed that
15 Sanchez committed grand theft of medications while employed by Partner Healthcare, for a six-
16 month period of time from April 2015 through October 2015, and the case was referred for
17 criminal prosecution of Sanchez for his crime.

18 69. Between July 2014 and December 2015, Partner Healthcare lost track of a large
19 amount of the inventory of Xanax and Promethazine, which demonstrates that there were no
20 meaningful measures in place during the time in question to prevent the loss, theft or diversion of
21 drugs by employees. The Xanax and Promethazine were on a shelf, not locked up, and there were
22 no cameras surveilling the area where they were placed in the pharmacy. Moreover, there were
23 no adequate policies or procedures in place to prevent pharmacy technicians from ordering these
24 controlled substances and/or taking possession of them upon delivery.

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1 **FIRST CAUSE FOR DISCIPLINE**
2 **(Respondent Partner Healthcare - Failure to Maintain**
3 **Effective Control and Security of Dangerous Drugs)**

4 70. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005,
5 4300 and 4301, subdivisions (o) and/or (j), in that Respondent violated California Code of
6 Regulations, title 16, section 1714, subdivision (b) and Code of Federal Regulations, title 21,
7 section 1301.75, subdivision (b), by failing to maintain the pharmacy and its facilities, space,
8 fixtures and/or equipment so that drugs/controlled substances were safely and properly secured,
9 as follows:

10 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to
11 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and
12 Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of
13 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg
14 showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015.
15 The allegations set forth above in Paragraphs 58-69 are incorporated by reference herein.

16 **SECOND CAUSE FOR DISCIPLINE**
17 **(Respondent Chang – Failure to Maintain Effective Control and**
18 **Security of Dangerous Drugs/Controlled Substances)**

19 71. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
20 4301, subdivisions (o) and (j), in conjunction with Sections 4036.5, 4105, 4156 and 4113,
21 subdivision (c) and California Code of Regulations, title 16, section 1709.1, subdivision (a), for
22 violating California Code of Regulations, title 16, section 1714, subdivision (d), and Code of
23 Federal Regulations, title 21, section 1301.75, in that, while employed as the PIC of Partner
24 Healthcare, Respondent Chang failed to maintain the pharmacy and its facilities, space, fixtures
25 and/or equipment so that drugs/controlled substances were safely and properly secured, as
26 follows:

27 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to
28 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and
Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of

1 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg
2 showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015.
3 The allegations set forth above in Paragraphs 58-69 are incorporated by reference herein.

4 **THIRD CAUSE FOR DISCIPLINE**
5 **(Respondent Partner Healthcare –Failure to Maintain and/or**
6 **Produce Required Records)**

7 72. Respondent Partner Healthcare is subject to disciplinary action under Sections
8 4005, 4300 and 4301, subdivisions (o) and/or (j), 4105 and 4156, in conjunction with California
9 Code of Regulations, title 16, section 1718, in that Respondent Partner Healthcare violated
10 Sections 4081, subdivision (a) and 4332, by failing to maintain required records and/or produce
11 them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014
12 and December 10, 2015. The allegations set forth above in Paragraphs 58-69 are incorporated by
13 reference herein.

14 **FOURTH CAUSE FOR DISCIPLINE**
15 **(Respondent Chang –Failure to Maintain and/or Produce**
16 **Maintain Required Records)**

17 73. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
18 4301, subdivisions (o) and/or (j), in conjunction with Section 4036.5, for violating Sections 4081,
19 subdivisions (a) and (b), 4105 and 4332, and California Code of Regulations, title 16, section
20 1709.1, subdivision (a), in that, while employed as PIC of Partner Healthcare, Respondent failed
21 to maintain required records for Partner Healthcare and/or produce them to the Board, for
22 Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015.
23 The allegations set forth above in Paragraphs 58-69 are incorporated by reference herein.

24 **FIFTH CAUSE FOR DISCIPLINE**
25 **(Respondents Hwang, Garner and Thai –Failure to Provide**
26 **and/or Maintain Required Records)**

27 74. Respondents Hwang, Garner and Thai are subject to disciplinary action under
28 Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), for violating Sections 4081,
subdivisions (a) and (b) and 4105, in that, Hwang, while employed as the Pharmacy Director and
Treasurer/Chief Financial Officer of Partner Healthcare, and Garner and Thai, while employed as

1 Owners of Partner Healthcare, failed to maintain required records for Partner Healthcare and/or
2 produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July
3 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 58-69 are
4 incorporated by reference herein.

5 **SIXTH CAUSE FOR DISCIPLINE**
6 **(Respondent Sanchez - Conviction of a**
7 **Substantially Related Crime)**

8 75. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
9 (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that
10 Respondent has been convicted of a crime substantially related to the qualifications, functions or
11 duties of a pharmacy technician. On or about July 25, 2016, after pleading nolo contendere,
12 Respondent was convicted of one felony count of violating Penal Code section 487, subdivision
13 (a) [grand theft of personal property] in the criminal proceeding entitled *The People of the State*
14 *of California v. Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse,
15 2016, No. GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles
16 County Jail, placed him on five years' formal probation, and ordered him to pay restitution to the
17 victim, among other terms and conditions. The circumstances surrounding the conviction are set
18 forth above, in Paragraphs 58-69, and are incorporated herein by reference.

19 **SEVENTH CAUSE FOR DISCIPLINE**
20 **(Respondent Sanchez - Acts Involving**
21 **Dishonesty, Fraud, or Deceit)**

22 76. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
23 (f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to substantially
24 benefit himself, or substantially injure another, when he stole Promethazine with Codeine syrup
25 and Alprazolam 2 mg between approximately April 2015 and October 2015 from his employer, as
26 alleged above in Paragraphs 58-69, which are incorporated herein by reference.

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1 **EIGHTH CAUSE FOR DISCIPLINE**
2 **(Respondent Sanchez - Illegal Possession of Prescription**
3 **Drugs Without a Valid Prescription)**

4 77. Respondent Sanchez is subject to disciplinary action under Section 4301,
5 subdivisions (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158,
6 subdivision (a), and 11171, in that, between approximately April 2015 and October 2015,
7 Respondent was in possession of prescription drugs without a valid prescription. Complainant
8 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 58-69.

9 **NINTH CAUSE FOR DISCIPLINE**
10 **(Respondent Sanchez – Furnishing Prescription Drugs**
11 **To Others Without a Valid Prescription)**

12 78. Respondent Sanchez is subject to disciplinary action under Section 4301,
13 subdivisions (j) and/or (o), for violating Section 4059, subdivision (a), in that, between
14 approximately April 2015 and October 2015, he illegally sold and/or transferred stolen
15 prescription drugs to his friends, without a valid prescription. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in Paragraphs 58-69.

17 **TENTH CAUSE FOR DISCIPLINE**
18 **(Respondent Chang - Failure to Exercise or**
19 **Implement Best Professional Judgment)**

20 79. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and
21 4301, subdivisions (o) and/or (j), for unprofessional conduct pursuant to Sections 4036.5, 4059,
22 4059.5, 4060, 4081, 4113, subdivision (c), 4301 and 4306.5, subdivisions (a) through (c), in that
23 Respondent, while acting as the PIC of Partner Healthcare, failed to appropriately exercise his
24 education, training, or experience as a pharmacist and failed to exercise or implement his best
25 professional judgment with regard to securing, dispensing, accounting for and/or furnishing the
26 dangerous drugs/controlled substances Alprazolam 2 mg and Promethazine with Codeine syrup
27 and failed to consult appropriate patient, prescription, and other records for these drugs, as set
28 forth in Paragraphs 58-69 above, which are incorporated herein by reference.

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ELEVENTH CAUSE FOR DISCIPLINE
(Respondents Partner Healthcare, Thai and Garner – Failure to Notify Board of Loss of Controlled Substances)

80. Respondents Partner Healthcare, Garner and Thai are subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Sections 4156, for violating title 16, California Code of Regulations, section 1715.6, in that Respondents Partner Healthcare and Garner and Thai, while employed as Owners of Partner Healthcare, failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. The facts supporting this cause are specified in Paragraphs 58-69 above and incorporated herein by reference.

TWELFTH CAUSE FOR DISCIPLINE
(Respondent Chang – Failure to Notify Board of Loss of Controlled Substances)

81. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4113, subdivision (c), for violating title 16, California Code of Regulations, section 1715.6, in that Respondent failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. On January 4, 2016, Chang reported the loss of controlled substances to the Board; however, he knew or reasonably should have known of the loss of a large quantity of controlled substances/dangerous drugs by no later than November 20, 2015. The facts supporting this cause are specified in Paragraphs 58-69 above and incorporated herein by reference.

FACTS RELATED TO ANNUAL RENEWAL INSPECTION
OF PHARMACY ON AUGUST 1, 2017 AND INVESTIGATION

82. On August 1, 2017, a Board Inspector conducted an annual sterile compounding renewal inspection at Partner Healthcare, located at 2035 S. Myrtle Avenue, Monrovia, CA 91016. The pharmacy is described as a very large “Closed Door” pharmacy providing both sterile compounds and non sterile medications to approximately 4,500 consumers residing in either a skilled nursing facility or assisted living home. Respondent Hwang was present and assisted with the inspection.

1 83. In the area where sterile compounding was conducted, the Board’s Inspector opened
2 and inspected the contents stored inside a refrigerator. On one shelf inside was a plastic tote with
3 two dozen, previously frozen, manufacturer prepared Cefazolin 1 gm IVPB (injectable) that were
4 thawed and in liquid form. Each Cefazolin had a sticker on it indicating the expiration date of the
5 product was 9/30/17. However, the manufacturer expiration date on the product label clearly
6 stated “Thawed solution is stable for 30 days under refrigeration and 48 hours at room
7 temperature.”

8 84. Hwang could not explain why each Cefazolin was given a 60-day expiration date.
9 The Board’s Inspector asked Hwang to provide a policy and procedure for thawing frozen
10 antibiotics which she did. The policy and procedure clearly stated the Cefazolin solution was
11 stable for 30 days under refrigeration and 48 hours at room temperature. Hwang was again asked
12 to explain why the Cefazolin were misbranded. She summoned Pharmacy Technician D.M., who
13 stated he placed the expiration date on the Cefazolin bags, but must have inadvertently used an
14 incorrect date.

15 85. The Board’s Inspector discussed with Hwang her findings of the inspection and areas
16 which were noncompliant and for which corrections were issued, including but not limited to the
17 lack of documentation that PIC Chang had reviewed the policies and procedures annually or how
18 the staff were notified of changes to them. The Board’s Inspector requested that Hwang provide
19 her with evidence of an annual quantitative analysis ensuring integrity, potency, quality, and
20 labeled strength. Hwang was able to locate reports from Eagle Analytical Services dated 8/07/15
21 and 7/20/17, but was not able to locate a report indicating the quality assurance review was
22 performed in 2016. Hwang telephoned PIC Chang, and then informed the Board’s Inspector the
23 two reports she presented were the only ones they had.

24 86. At the conclusion of her inspection on August 1, 2017, the Board’s Inspector issued a
25 written notice of noncompliance for the following violations: (1) Section 4342, for drugs which
26 do not conform to the standard and tests as to quality and strength, for having 24 previously
27 frozen Cefazolin 1 gm IVPB found thawed in a refrigerator with an expiration date of 9/30/17
28 affixed, when the manufacturer states the product is only good for 30 days once thawed; and

1 (2) California Code of Regulations, title 16, section 1735.8, subdivision (c), in that documentation
2 provided for the pharmacy indicated a compounded product had quantitative analysis performed
3 on 8/07/15, then on 7/20/17, which showed that the quantitative analysis was not performed on at
4 least an annual basis.

5 87. In the Inspection Report, PIC Chang was requested to fax or email additional
6 documents, including but not limited to revised policies and procedures which reflected
7 compliance with Sections 1735.5, subdivisions (d) & (e) and 1735.8, subdivision (d). On or
8 about August 13, 2017, Chang emailed the Board's Inspector revisions to the pharmacy's sterile
9 compounding policies and procedures.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**
11 **(Respondent Partner Healthcare – Non-Conforming**
12 **Dangerous Drugs Lacking Quality and Strength)**

13 88. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
14 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating
15 Section 4342, subdivisions (a) and/or (b). The circumstances are that, on or about August 1, 2017,
16 during an inspection by the Board's Inspector at Partner Healthcare there were dangerous drugs, 24
17 previously frozen Cefazolin 1 gm IVPB in stock which were incorrectly labelled with an expiration
18 date of September 30, 2017 (60 days) affixed, when the manufacturer of the product stated the
19 Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth above in greater detail
20 in Paragraphs 82-87, which allegations are incorporated here fully by reference. The 24 thawed
21 Cefazolin 1 gm IVPB did not conform to the standard and tests as to quality and strength, provided
22 in the latest edition of the U.S. Pharmacopoeia or the National Formulary and/or there was a
23 knowing or willful violation of a regulation or regulations adopted pursuant to Section 4006.

24 **FOURTEENTH CAUSE FOR DISCIPLINE**
25 **(Respondent Chang - Non-Conforming Dangerous**
26 **Drugs Lacking Quality and Strength)**

27 89. Respondents PIC Chang is subject to disciplinary action under Sections 4036.5, 4113,
28 subdivision (c), 4300 and 4301, subdivision (o), for violating Section 4342, subdivision (a). The
circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector

1 at Partner Healthcare there were dangerous drugs, 24 previously frozen Cefazolin 1 gm IVPB in
2 stock which were incorrectly labelled with an expiration date of September 30, 2017 (60 days)
3 affixed, when the manufacturer of the product stated the Cefazolin 1 gm IVPB was only good for
4 30 days once thawed, as set forth above in greater detail in Paragraphs 82-87, which allegations are
5 incorporated here fully by reference. The 24 thawed Cefazolin 1 gm IVPB did not conform to the
6 standard and tests as to quality and strength, provided in the latest edition of the U.S.
7 Pharmacopoeia or the National Formulary and/or there was a knowing or willful violation of a
8 regulation or regulations adopted pursuant to Section 4006.

9 90. Pursuant to Section 4113, subdivision (c), Respondent Chang, as the PIC during the
10 relevant time period, is liable for his failure to adequately supervise his employees, and institute
11 and follow adequate policies and procedures to ensure that all compounded drugs and dangerous
12 drugs, including the 24 thawed Cefazolin 1 gm IVPB, were properly labelled, and conformed in
13 quality and strength to the manufacturer's specifications and all applicable state and federal
14 regulations.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**
16 **(Respondent Partner Healthcare - Compounding Quality Assurance)**

17 91. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
18 are subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating
19 California Code of Regulations, title 16, section 1735.8, subdivision (c), in conjunction with
20 California Code of Regulations, title 16, sections 1735.2, subdivision (h) and 1735.6, subdivision
21 (a). The circumstances are that, on or about August 1, 2017, during an inspection by the Board's
22 Inspector at Partner Healthcare and investigation, it was determined that Respondent did not ensure
23 integrity, potency, quality and labeled strength of dangerous drugs at least once annually, between
24 8/7/15 and 7/20/17, as set forth above in greater detail in Paragraphs 82-87, which allegations are
25 incorporated here fully by reference.

26 **SIXTEENTH CAUSE FOR DISCIPLINE**
27 **(Respondents Chang – Compounding Quality Assurance)**

28 92. Respondent PIC Chang is subject to disciplinary action under sections 4036.5, 4113,
4300 and 4301, subdivision (o), for violating California Code of Regulations, title 16, section

1 1735.8, subdivision (c), in conjunction with California Code of Regulations, title 16, sections
2 1735.2, subdivision (h) and 1735.6, subdivision (a) and Section 4081, subdivision (b). The
3 circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector
4 at Partner Healthcare and investigation, it was determined that Respondent did not ensure integrity,
5 potency, quality and labeled strength of dangerous drugs (24 previously frozen Cefazolin 1 gm
6 IVPB) at least once annually, between 8/7/15 and 7/20/17, as set forth above in greater detail in
7 Paragraphs 82-87, which allegations are incorporated here fully by reference.

8 93. Pursuant to Section 4113, Respondent Chang, as the PIC of the pharmacy during the
9 relevant time period, is liable for his failure and/or that of the pharmacy's employees to ensure
10 integrity, potency, quality and labeled strength of compounded products. The pharmacy's policies
11 and procedures shall be reviewed and such review shall be documented on an annual basis by the
12 PIC. Respondent Chang did not document he reviewed the pharmacy's policies and procedures
13 annually or how staff were notified of any changes to them. The allegations are set forth above in
14 greater detail in Paragraphs 82-87, are incorporated here fully by reference.

15 **FACTS RELATED TO ANNUAL RENEWAL INSPECTION**
16 **OF PHARMACY ON AUGUST 23, 2018 AND INVESTIGATION**

17 94. On August 23, 2018, a Board Inspector conducted an annual sterile compounding
18 inspection, routine inspection, and complaint investigation at Partner Healthcare. The Board had
19 received an anonymous written complaint alleging that Partner Healthcare dispensed Schedule II
20 (CII) controlled substance prescriptions without verifying the prescription(s) with a physician.
21 The complainant alleged the administrators at Highland Palms Healthcare and Arlington Gardens
22 Care Center made it known that the verbal and written controlled substance prescriptions
23 transcribed by nurses did not need to be verified. The complainant alleged this created a loophole
24 for diversion of controlled substances.

25 95. During the inspection on August 23, 2018, Staff Pharmacist A.T., Respondent
26 Hwang, and Respondent Chang indicated that the pharmacy dispensed CII controlled substance
27 prescriptions (CII prescriptions) for the skilled nursing facilities (SNF) as follows:
28

1 • The SNF faxed the patient's CII controlled substance orders to the pharmacy, and the
2 order was typed into the computer system by pharmacy processing staff.

3 • The pharmacy technician reduced the CII controlled substance orders to writing onto
4 a pharmacy generated CII controlled substance order form and the prescription was filled.

5 • The pharmacist verified the written order which was reduced to writing by the
6 technician against the faxed order received by the facility. The first time the pharmacist viewed
7 the faxed order request was during the prescription verification process which was after it had
8 already been processed, reduced to writing, and filled.

9 • The pharmacist did not contact the prescriber to verify or validate the requested order
10 before it was filled. After the prescription had been dispensed, the pharmacy-generated CII
11 controlled substances order was faxed to the prescriber/physician, which was usually the
12 following morning.

13 • The CII controlled substance prescription was dispensed to the patient prior to the
14 pharmacy receiving the prescriber's signature for the CII controlled substance order. The
15 pharmacy followed up with subsequent faxes, telephone calls, and text messages to the
16 prescribers to obtain their signature.

17 • The pharmacy typically generated a prescription for an emergency seven-day supply,
18 but only dispensed increments of a three day-supply.

19 96. During the inspection, the Inspector randomly selected and obtained some CII
20 controlled substance orders that were waiting for prescriber signatures, as well as a copy of the
21 facility orders used to initiate the CII controlled substance order, identity of the pharmacist who
22 dispensed the CII controlled substance order, and the patient prescription profile for each of the
23 respective CII controlled substance orders. The following sample of unsigned prescriber CII
24 controlled substances prescription orders were received during the inspection:

Patient	Dispense Date	RX#	Drug	Oral/written/ electronic RX received prior to dispensing	Signed RX received within 7 days
DN	7/3/18	60675427	Hydrocodone/APAP 5/325	No	No
NG	5/15/18	60587986	Hydrocodone/APAP 10/325	No	No

JM	7/18/18	60701924	Hydrocodone/APAP 5/325	No	No
OO	8/3/18	60731152	Hydrocodone/APAP 5/325	No	No
DA	7/18/18	60701384	Hydrocodone/APAP 5/325	No	No
PB	8/4/18	60732757	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60748718	Hydrocodone/APAP 5/325	No	No
RD	8/14/18	60749311	Hydrocodone/APAP 5/325	No	No
RD	8/15/18	60750693	Hydrocodone/APAP 10/325	No	No
OM	8/3/18	60730390	Hydrocodone/APAP 10/325	No	No
JM	7/25/18	60714127	Hydrocodone/APAP 5/325	No	No
PR	8/15/18	60750545	Oxycodone/APAP 10/325	No	No

97. None of the CII controlled substance orders were signed by the prescriber, transcribed by the dispensing pharmacist, and no verbal authorization was received by the pharmacist from the prescriber prior to dispensing the CII controlled substance prescriptions. Respondent Hwang stated she believed the pharmacy was following the law by using the pharmacy generated CII controlled substance prescription forms for emergency and oral continuation CII orders. Respondent Hwang also stated the pharmacy obtained all the required information and followed up by obtaining the signature from the prescriber and signature of nurse upon delivery. Respondent Chang indicated it was difficult to get the prescribers' signatures, and that the pharmacy dispensed the prescription as an emergency to take care of the patient.

98. The Inspector requested and received the following sample of signed prescriber CII controlled substance prescription orders:

Patient	Dispense Date	RX#	Drug	Oral/ written/electronic RI (received prior to dispensing)	Signed RX Received w/in 7 days
SA	7/13/18	60693477	Hydrocodone/APAP 5/325	No	Yes
MA	8/7/18	60736457	Oxycodone 15 mg	No	Yes
TA	8/7/18	60738118	Hydrocodone/APAP 10/325	No	Yes
ED	7/16/18	60696251	Hydrocodone/APAP 10/325	No	Yes
KE	7/23/18	60708719	Hydrocodone/APAP 5/325	No	Yes
LG	7/18/18	60701879	Hydrocodone/APAP 7.5/325	No	Yes
MG	7/19/18	60703802	Hydrocodone/APAP 5/325	No	Yes
SL	7/3/18	60673728	Hydrocodone/APAP 5/325	No	Yes
CM	7/18/18	60702003	Oxycodone 10 mg	No	Yes
AM	7/18/18	60702228	Hydrocodone/APAP 10/325	No	.Yes

AS	7/19/18	60703214	Hydrocodone/APAP 5/325	No	Yes
TT	7/20/18	60706146	Hydrocodone/APAP 5/325	No	Yes
JV	7/21/18	60706467	Hydrocodone/APAP 5/325	No	Yes
TG	8/13/18	60748487	Fentanyl IOO mcg	No	Yes
TG	8/14/18	60749232	Oxycodone 5 mg	No	Yes
HM	8/15/18	60750524	Fentanyl IOO mcg	No	Yes
MM	8/13/18	60747546	Hydrocodone/APAP 5/325	No	Yes

99. None of the CII controlled substance orders were signed by the prescriber or transcribed by the dispensing pharmacist and no verbal authorization was received by the pharmacist from the prescriber before the CII controlled substance prescription was dispensed. Respondent Hwang acknowledged during the inspection that the pharmacy serviced the two SNFs, Highland Palms and Arlington Gardens, mentioned in the anonymous complaint to the Board.

100. The Inspector requested Respondent Chang's written statement regarding her written notices of non-compliance with Health and Safety Code section 11167.5, subdivision (a), as it relates to Code of Federal Regulation 1306.11, subdivision (f), for dispensing CII controlled substance prescriptions without first obtaining a verbal or written order from the prescriber and for not obtaining a signed order within seven days. In addition, the Inspector requested that Respondent Chang provide information about the pharmacy's policies, procedures and protocols.

101. In response, on September 13, 2018, Respondent Chang e-mailed the Inspector his written statement, which is summarized as follows:

- Partner Healthcare provided prescription service to several SNFs, which included regularly filling around 3,500 prescriptions daily, of which 250-300 are new and refill orders for CII controlled substance medications. Most of these orders were for patients recently discharged from hospitals after surgery and transferred to SNFs for recovery and rehabilitation and under pain management therapy.
- Partner Healthcare's standard procedure was to receive authorization from the facility/attending prescriber before dispensing CII controlled substances, either through a signed order or verbal order. However, the pharmacy had an outstanding verbal authorization from the SNF medical directors allowing the pharmacy to dispense a reasonable amount of medications, including controlled substances, to patients discharged from hospitals into the SNF. This arrangement was due to the practical difficulty of contacting prescribers after hours, which was when these transactions mainly occurred.

- 1
- 2 • The current protocol required the pharmacy to reach out to the SNFs to
3 get a copy of the patient's discharge order. The pharmacist reviewed the
4 order and it served as the basis in determining the patient's need for
5 continuity of care and the appropriateness of the drug, strength, dose,
6 and quantity to be given to the patient. The pharmacy always followed
7 these procedures for SNF patients and never dispensed any controlled
8 substance or any prescription without the prescriber's (or medical
9 director's) consent.

10

11 **SEVENTEENTH CAUSE FOR DISCIPLINE**
12 **(Respondents Partner Healthcare and Chang -**
13 **Dispensed Emergency Prescriptions For CII Controlled**
14 **Substances Without A Physician's Order)**

15 102. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary
16 action under Sections 4301, subdivisions (o) and/or (j) and 4113, subdivision (c), in conjunction
17 with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while
18 Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Health
19 and Safety Code section 11167, subdivisions (a)-(d), by dispensing emergency prescriptions for
20 CII controlled substances to patients at SNFs without a valid written electronic or oral order from
21 the physician prior to dispensing, and by failing to obtain a signed written order from the
22 physician within seven days of dispensing the CII controlled substances, in 2018, as set forth
23 above in Paragraphs 94-101, which are incorporated by reference.

24

25 **EIGHTEENTH CAUSE FOR DISCIPLINE**
26 **(Respondents Partner Healthcare and Chang -**
27 **Dispensed CII Controlled Substance**
28 **Without A Physician's Order)**

103. Respondent Partner Healthcare and Respondent Chang are subject to disciplinary
action under Sections 4301, subdivisions (o) and/or (j), and 4113, subdivision (c), in conjunction
with California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while
Respondent Chang was employed as the PIC of Partner Healthcare, Respondents violated Code of
Federal Regulations, title 21, section 1306.11, subdivisions (c)-(f) and Health and Safety Code
section 11167.5, subdivision (a), by dispensing prescriptions for CII controlled substances to

1 patients at SNFs without first obtaining a valid electronic or written order from the physician, as
2 set forth above in Paragraphs 94-101, which are incorporated by reference.

3 **OTHER MATTERS**

4 104. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
5 Number PHY 51078 issued to Partner Healthcare Inc., Partner Healthcare Inc. shall be prohibited
6 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
7 of a licensee for five years if Pharmacy Permit Number PHY 51078 is placed on probation or
8 until Pharmacy Permit Number PHY 51078 is reinstated if it is revoked.

9 105. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
10 PHY 51078 issued to Partner Healthcare Inc. while Khanh-Long Thai, Ammie Hwang and/or
11 Brian Garner have been an officer and owner and had knowledge of or knowingly participated in
12 any conduct for which the licensee was disciplined, Khanh-Long Thai, Ammie Hwang and/or
13 Brian Garner shall be prohibited from serving as a manager, administrator, owner, member,
14 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
15 PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is reinstated if
16 it is revoked.

17 **DISCIPLINE CONSIDERATIONS**

18 106. To determine the degree of discipline, Complainant alleges as follows:

19 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014
20 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the
21 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in
22 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the
23 citation. The citation was paid in full and became the final order.

24 b. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
25 65972 against Respondent Partner Healthcare for failing to prevent the sale of drugs lacking in
26 quality and for taking back medications from assisted living facilities and placing them into
27 containers to be dispensed to other patients, in violation of Section 4342, subdivision (a) and
28 Health and Safety Code section 111440. A fine in the amount of \$2,000 was issued with the

1 citation. The citation was paid in full and became the final order.

2 c. On or about February 24, 2016, the Board issued administrative Citation No. CI 2015
3 69197 against Respondent Henry Hung Yat Chang for failing to ensure that he, as PIC for Partner
4 Healthcare, did not exceed the pharmacist to pharmacy technician ratio of 2:1 between June 14,
5 2015 and June 20, 2015, in violation of Section 4115, subdivision (f)(1). A fine in the amount of
6 \$5,000 was issued with the citation. The citation was paid in full and became the final order.

7 d. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
8 65972 against Respondent Henry Hung Yat Chang for failing to prevent the sale of drugs lacking
9 in quality and for taking back medications from assisted living facilities and placing them into
10 containers to be dispensed to other patients, while he was PIC for Partner Healthcare, in violation
11 of Section 4342, subdivision (a) and Health and Safety Code section 111440. A fine in the
12 amount of \$2,000 was issued with the citation. The citation was paid in full and became the final
13 order.

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 Pharmacy Permit Number PHY 51078, issued to Partner
18 Healthcare, Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner;

19 2. Revoking or suspending Pharmacist Permit Number RPH 53723, issued to Henry
20 Hung Yat Chang;

21 3. Revoking or suspending Pharmacist Permit Number 53678, issued to Khanh-Long
22 Thai;

23 4. Revoking or suspending Pharmacist Permit Number 53940, issued to Ammie Hwang;

24 5. Revoking or suspending Pharmacist Permit Number 53680, issued to Brian Garner;

25 6. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,
26 issued to Nestor Daniel Sanchez;

27 7. Prohibiting Khanh-Long Thai from serving as a manager, administrator, owner,
28 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit

1 Number PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is
2 reinstated if Pharmacy Permit Number PHY 51078 issued to Partner Healthcare, Inc. is revoked;

3 8. Prohibiting Ammie Hwang from serving as a manager, administrator, owner,
4 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
5 Number PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is
6 reinstated if Pharmacy Permit Number PHY 51078 issued to Partner Healthcare Inc. is revoked;

7 9. Prohibiting Brian Garner from serving as a manager, administrator, owner, member,
8 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
9 PHY 51078 is placed on probation or until Pharmacy Permit Number PHY 51078 is reinstated if
10 Pharmacy Permit Number PHY 51078 issued to Partner Healthcare Inc. is revoked;

11 10. Ordering Partner Healthcare Inc., Henry Hung Yat Chang, Khanh-Long Thai, Ammie
12 Hwang, Brian Garner, and Nestor Sanchez, jointly and severally, to pay the Board of Pharmacy
13 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3; and,

15 11. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: April 15, 2019 _____



19 ANNE SODERGREN
20 Interim Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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7

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

11 In the Matter of the Accusation Against:

Case No. 6176

12 **PARTNER HEALTHCARE, INC.; HENRY**
13 **HUNG YAT CHANG; KHANH-LONG**
14 **THAI; AMMIE HWANG; BRIAN**
15 **GARNER**

SECOND AMENDED ACCUSATION

16 **2035 S. Myrtle Ave.**
17 **Monrovia, CA 91016**

18 **Pharmacy Permit No. PHY 51078**

19 AND

20 **HENRY HUNG YAT CHANG**
21 **2035 S. Myrtle Ave.**
22 **Monrovia, CA 91016**

23 **Pharmacist License No. RPH 53723**

24 AND

25 **AMMIE HWANG**
26 **3948 N. Peck Road #A**
27 **El Monte, CA 91732**

28 **Pharmacist License No. RPH 53940**

AND

1 **BRIAN TRACY GARNER**

2 **137 N. Harvard Ave.**
3 **Claremont, CA 91711**

4 **Pharmacist License No. RPH 53680**

5 AND

6 **KHANH-LONG THAI**

7 **3948 N. Peck Road #A1**
8 **El Monte, CA 91732**

9 **Pharmacist License No. RPH 53678**

10 AND

11 **NESTOR DANIEL SANCHEZ**

12 **13728 Olive St.**
13 **Baldwin Park, CA 91706**

14 **Pharmacy Technician Registration No. TCH**
15 **123802**

16 Respondents.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Second Amended Accusation (Accusation)
20 solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board),
21 Department of Consumer Affairs.

22 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078
23 to Partner Healthcare Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian
24 Garner (Respondent and/or Partner Healthcare and/or the pharmacy). The Pharmacy Permit was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 October 1, 2018, unless renewed.

27 3. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
28 53723 to Henry Hung Yat Chang (Respondent Chang). The Pharmacist License was in full force
and effect at all times relevant to the charges brought herein and will expire on October 31, 2019,
unless renewed. Chang is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since
October 2, 2012.

1 4. On or about August 28, 2002, the Board issued Pharmacist License Number RPH
2 53940 to Ammie Hwang (Respondent Hwang). The Pharmacist License was in full force and
3 effect at all times relevant to the charges brought herein and will expire on October 31, 2019,
4 unless renewed. Hwang is and has been the Treasurer/Chief Financial Officer of the pharmacy
5 since July 19, 2013.

6 5. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
7 53680 to Brian Tracy Garner (Respondent Garner). The Pharmacist License was in full force and
8 effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless
9 renewed. Garner is and has been the Vice President and 32% shareholder of the pharmacy since
10 October 2, 2012.

11 6. On or about September 23, 2002, the Board issued Pharmacist License Number RPH
12 53678 to Khanh-Long Thai (Respondent Thai). The Pharmacist License was in full force and
13 effect at all times relevant to the charges brought herein and will expire on December 31, 2019,
14 unless renewed. Thai is and has been the Chief Executive Officer and President and 52%
15 shareholder of the pharmacy since July 19, 2013.

16 7. On or about May 24, 2012, the Board issued Pharmacy Technician Registration
17 Number TCH 123802 to Nestor Daniel Sanchez (Respondent Sanchez). The Pharmacy
18 Technician Registration was in full force and effect at all times relevant to the charges brought
19 herein and expired on December 31, 2017. On July 3, 2018, the Board issued a Decision and
20 Order, effective on August 2, 2018, adopting a Stipulated Surrender of License and Order in
21 which Sanchez agreed to voluntarily surrender his license and admitted to the allegations in the
22 Second Amended Accusation.

23 **JURISDICTION**

24 8. This Accusation is brought before the Board, under the authority of the following
25 laws. All section references are to the Business and Professions Code unless otherwise indicated.

26 9. Under Section 4300, the Board may discipline any license, for any reason provided in
27 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

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10. Section 4300.1 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.

11. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Under Section 4402, subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to the expiration of the three-year period.

STATUTORY PROVISIONS

12. Section 490 states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the

1 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
2 constitute a change to, but rather are declaratory of, existing law.

3 13. Section 4005 allows the Board to adopt rules and regulations as may be necessary for
4 the protection of the public, as follows:

5 [F]or the proper and more effective enforcement and administration of this
6 chapter; pertaining to the practice of pharmacy; . . . pertaining to persons and
7 establishments licensed under this chapter; pertaining to establishments wherein any
8 drug . . . is compounded, prepared, furnished, or dispensed; providing for standards of
9 minimum equipment for establishments licensed under this chapter. . .

10 14. Section 4006 provides as follows:

11 The board may adopt regulations consistent with this chapter and Section
12 111485 of the Health and Safety Code or regulations adopted thereunder, limiting or
13 restricting the furnishing of a particular drug upon a finding that the otherwise
14 unrestricted retail sale of the drug pursuant to Section 4057 is dangerous to the public
15 health or safety.

16 15. Section 4007 provides, in relevant part, that: “(b) . . . [R]ules and regulations may
17 require that the function be performed only under the effective supervision of a pharmacist who
18 shall have the overall responsibility for supervising all activities that take place in the pharmacy.”

19 16. Section 4021 sets forth that “‘Controlled substance’ means any substance listed in
20 Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

21 17. Section 4022 states, in pertinent part:

22 “Dangerous drug” or “dangerous device” means any drug or device unsafe
23 for self-use in humans or animals, and includes the following:

24 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
25 without prescription,” “Rx only,” or words of similar import.

26 (b) Any device that bears the statement: “Caution: federal law restricts this
27 device to sale by or on the order of a _____,” “Rx only,” or words of similar
28 import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

18. Section 4036.5 states that “‘Pharmacist-in-charge’ means a pharmacist proposed by a
pharmacy and approved by the board as the supervisor or manager responsible for ensuring the

1 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice
2 of pharmacy."

3 19. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous
4 drug or dangerous device except upon the prescription of an authorized prescriber.

5 20. Section 4059.5, subdivision (a) provides, in relevant part, as follows:

6 (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous
7 devices may only be ordered by an entity licensed by the board and shall be delivered
8 to the licensed premises and signed for and received by a pharmacist . . .

9 (b) A dangerous drug . . . transferred, sold, or delivered to a person within this
10 state shall be transferred, sold, or delivered only to an entity licensed by the board, to
11 a manufacturer, or to an ultimate user or the ultimate user's agent.

12 * * * *

13 (d) . . . A person or entity receiving delivery of a dangerous drug . . . or a duly
14 authorized representative of the person or entity, shall sign for the receipt of the
15 dangerous drug . . .

16 * * * *

17 21. Section 4060 states, in pertinent part:

18 A person shall not possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor . . . This section does not apply to the possession
21 of any controlled substance by a manufacturer, wholesaler, third-party logistics
22 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
23 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
24 physician assistant, if in stock in containers correctly labeled with the name and
25 address of the supplier or producer.

26 * * * *

27 22. Section 4081 provides, in relevant part, that:

28 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
disposition of dangerous drugs shall be at all times during business hours open to
inspection by authorized officers of the law, and shall be preserved for at least three
years from the date of making. A current inventory shall be kept by every
manufacturer, wholesaler...pharmacy...or establishment holding a currently valid and
unrevoked certificate, license, permit, registration, or exemption under Division 2
(commencing with Section 1200) of the Health and Safety Code...who maintains a
stock of dangerous drugs or dangerous devices.

///

1 (b) The owner, officer, and partner of a pharmacy ... shall be jointly
2 responsible, with the pharmacist-in-charge, responsible manager, or designated
3 representative-in-charge, for maintaining the records and inventory described in this
4 section.

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

10 23. Section 4105 states, in pertinent part, that "(a) All records or other documentation of
11 the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed
12 by the board shall be retained on the licensed premises in a readily retrievable form."

13 24. Section 4113 states, in pertinent part, that: "(c) The pharmacist-in-charge shall be
14 responsible for a pharmacy's compliance with all state and federal laws and regulations
15 pertaining to the practice of pharmacy."

16 25. Section 4156 states as follows:

17 A pharmacy corporation shall not do, or fail to do, any act where doing or
18 failing to do the act would constitute unprofessional conduct under any statute or
19 regulation. In the conduct of its practice, a pharmacy corporation shall observe and
20 be bound by the laws and regulations that apply to a person licensed under this
21 chapter.

22 26. Section 4301 of the Code states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
25 to, any of the following:

26 * * * *

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

* * * *

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of
a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
shall be conclusive evidence only of the fact that the conviction occurred. The

1 board may inquire into the circumstances surrounding the commission of the
2 crime, in order to fix the degree of discipline or, in the case of a conviction not
3 involving controlled substances or dangerous drugs, to determine if the conviction
4 is of an offense substantially related to the qualifications, functions, and duties of a
5 licensee under this chapter. A plea or verdict of guilty or a conviction following a
6 plea of nolo contendere is deemed to be a conviction within the meaning of this
7 provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing the person to
11 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
12 the verdict of guilty, or dismissing the accusation, information, or indictment.

13 * * * *

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

19 27. Section 4302 of the Code states:

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

25 28. Section 4306.5 provides, in pertinent part, that:

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

27 (a) Acts or omissions that involve, in whole or in part, the inappropriate
28 exercise of his or her education, training, or experience as a pharmacist, whether or
not the act or omission arises in the course of the practice of pharmacy or the
ownership, management, administration, or operation of a pharmacy or other entity
licensed by the board.

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

(c) Acts of omissions that involve, in whole or in part, the failure to consult
appropriate patient, prescription, and other records pertaining to the performance of
any pharmacy function.

(d) Acts of omissions that involve, in whole or in part, the failure to fully
maintain and retain appropriate patient-specific information pertaining to the
performance of any pharmacy function.

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29. Section 4307 provides that:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner, or in any other position with management or control of a licensee as follows . . .

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

30. Section 4332, subdivision (a), states, in relevant part:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

31. Section 4342 provides, in relevant part, that:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law...

1 (b) Any knowing or willful violation of any regulation adopted pursuant to
2 Section 4006 shall be subject to punishment in the same manner as is provided in
Sections 4321 and 4336.

3 32. Health and Safety Code section 11158, subdivision (a), states:

4 Except as provided in Section 11159 or in subdivision (b) of this section, no
5 controlled substance classified in Schedule II shall be dispensed without a
6 prescription meeting the requirements of this chapter. Except as provided in
7 Section 11159 or when dispensed directly to an ultimate user by a practitioner,
other than a pharmacist or pharmacy, no controlled substance classified in
8 Schedule III, IV, or V may be dispensed without a prescription meeting the
9 requirements of this chapter.

10 33. Health and Safety Code section 11171 provides that no person shall prescribe,
11 administer, or furnish a controlled substance except under the conditions and in the manner
12 provided by this division.

13 **REGULATORY PROVISIONS**

14 34. California Code of Regulations, title 16, section 1707.3 sets forth that: "Prior to
15 consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and
16 medication record before each prescription drug is delivered. The review shall include screening
17 for severe potential drug therapy problems."

18 35. California Code of Regulations, title 16, section 1709.1 provides that: "(a) The
19 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
20 responsibility for the daily operation of the pharmacy."

21 36. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d)
22 provides that:

23 * * * *

24 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
25 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
26 secured and distributed. The pharmacy shall be of sufficient size and unobstructed area
27 to accommodate the safe practice of pharmacy.

28 * * * *

(d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices.
Possession of a key to the pharmacy where dangerous drugs and controlled
substances are stored shall be restricted to a pharmacist.

1 37. California Code of Regulations, title 16, section 1715.6, provides that: "The
2 owner shall report to the Board within thirty (30) days of discovery of any loss of the
3 controlled substances, including their amounts and strengths."

4 38. California Code of Regulations, title 16, section 1716, provides that:

5 Pharmacists shall not deviate from the requirements of a prescription except
6 upon the prior consent of the prescriber or to select the drug product in accordance
7 with Section 4073 of the Business and Professions Code.

8 Nothing in this regulation is intended to prohibit a pharmacist from exercising
9 commonly-accepted pharmaceutical practice in the compounding or dispensing of a
10 prescription."

11 39. California Code of Regulations, title 16, section 1718, provides that:

12 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
13 Professions Code shall be considered to include complete accountability for all
14 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

15 The controlled substances inventories required by Title 21, CFR, Section 1304
16 shall be available for inspection upon request for at least 3 years after the date of the
17 inventory.

18 40. California Code of Regulations section 1735 states, in part,

19 (a) "Compounding" means any of the following activities occurring in a
20 licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant to
21 a prescription:

22 (1) Altering the dosage form or delivery system of a drug.

23 41. California Code of Regulations, title 16, section 1735.2, subdivision (h), states:

24 Every compounded drug product shall be given an expiration date representing
25 the date beyond which, in the professional judgment of the pharmacist performing or
26 supervising the compounding, it should not be used. This "beyond use date" of the
27 compounded drug product shall not exceed 180 days from preparation or the shortest
28 expiration date of any component in the compounded drug product, unless a longer
date is supported by stability studies of finished drugs or compounded drug products
using the same components and packaging. Shorter dating than set forth in this
subsection may be used if it is deemed appropriate in the professional judgment of the
responsible pharmacist.

42. California Code of Regulations, title 16, section 1735.4, subdivision (b), states:

"A statement that the drug has been compounded by the pharmacy shall be included on the
container or on the receipt provided to the patient."

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43. California Code of Regulations, title 16, section 1735.6, subdivision (a), states:

“Any pharmacy engaged in compounding shall maintain written documentation regarding the facilities and equipment necessary for safe and accurate compounded drug products. Where applicable, this shall include records of certification(s) of facilities or equipment.”

44. California Code of Regulations, title 16, section 1735.8, states, in pertinent part:

(a) Any pharmacy engaged in compounding shall maintain, as part of its written policies and procedures, a written quality assurance plan designed to monitor and ensure the integrity, potency, quality, and labeled strength of compounded drug preparations.

(b) The quality assurance plan shall include written procedures for verification, monitoring, and review of the adequacy of the compounding processes and shall also include written documentation of review of those processes by qualified pharmacy personnel.

(c) The quality assurance plan shall include written standards for qualitative and quantitative analysis of compounded drug preparations to ensure integrity, potency, quality, and labeled strength, including the frequency of testing. All qualitative and quantitative analysis reports for compounded drug preparations shall be retained by the pharmacy and maintained along with the compounding log and master formula document. The quality assurance plan shall include a schedule for routine testing and analysis of specified compounded drug preparations to ensure integrity, potency, quality, and labeled strength, on at least an annual basis.

(d) The quality assurance plan shall include a written procedure for scheduled action in the event any compounded drug product is ever discovered to be below minimum standards for integrity, potency, quality, or labeled strength.

45. California Code of Regulations, title 16, section 1770, states, in pertinent part:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

46. Code of Federal Regulations, title 21, section 1301.75 sets forth, in pertinent part:

* * * *

(b) Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of

1 noncontrolled substances in such a manner as to obstruct the theft or diversion of the
2 controlled substances.

3 * * * *

4 47. Code of Federal Regulations, title 21, section 1304.11, subdivision (c), states:

5 “Biennial inventory date. After the initial inventory is taken, the registrant shall take a new
6 inventory of all stocks of controlled substances on hand at least every two years. The biennial
7 inventory may be taken on any date which is within two years of the previous biennial inventory
8 date.”

9 COST RECOVERY

10 48. Section 125.3 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation of the licensing
12 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

13 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

14 49. “Alprazolam” (brand name – “Xanax”) is a depressant and a Schedule IV controlled
15 substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is
16 categorized as a dangerous drug pursuant to Section 4022.

17 50. “Cefazolin 1 gm Sterile injectable” (brand name – “Ancef”) is a dangerous drug
18 pursuant to Section 4022 and is an antibiotic.

19 51. “Promethazine with Codeine” (brand name – “Phenergan-Codeine”) is a
20 dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code
21 section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

22 BOARD’S INVESTIGATION RELATED TO REPORT OF THEFT

23 OF CONTROLLED SUBSTANCES FROM PHARMACY

24 52. On or about January 4, 2016, the Board received from Respondent Chang, who was,
25 at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written
26 statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The
27 DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and
28 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence “points to employee

1 pilferage”, but there was no concrete evidence to prove that. In addition, the DEA 106 report and
2 Chang’s written statement indicate additional security measures were instituted by the pharmacy
3 to prevent future loss/theft, including: (1) installing additional video surveillance cameras;
4 (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all
5 controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

6 53. From February 8, 2016 to February 9, 2016, an analyst with the Board’s Complaint
7 Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated
8 by email with Respondent Chang and another pharmacist employed with Partner Healthcare,
9 A.H., for the purpose of conducting an audit and records supporting the audit.

10 54. On February 8, 2016, the Board received an audit spreadsheet and supporting
11 records, including a statement from Pharmacist A.H. dated February 6, 2016, with the following
12 information:

- 13 • On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container
14 (500 tablets/container).
- 15 • Reviewing a year of acquisition and disposition records revealed Promethazine with
16 Codeine and Alprazolam 2 mg showed discrepancies.
- 17 • An audit period was set by a last controlled substance inventory conducted on July 2,
18 2014 and an inventory conducted on December 10, 2015.
- 19 • There was an ongoing investigation with a detective at the Monrovia Police Department in
20 order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

21 55. The audit records revealed the following information:

- 22 • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about
23 1,775 bottles), based on records from July 2, 2014 to December 10, 2015.
- 24 • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records
25 from July 2, 2014 to December 10, 2015.
- 26 • A beginning inventory was conducted on July 1, 2014 and an ending inventory was
27 conducted on December 10, 2015.

1 • Purchasing records and a dispensing history for Alprazolam 2 mg were included.
2 • Purchasing records and a dispensing history for Promethazine with Codeine were
3 included.

4 • The submitted supporting audit records were reconciled with the spreadsheet and the drug
5 discrepancies.

6 56. From March 31, 2016 to April 12, 2016, a Board analyst and A.H. communicated via
7 email about an employee's theft of drugs from Partner Healthcare. The suspect, former Pharmacy
8 Technician Nestor Sanchez, was identified by the Monrovia Police Department and a criminal
9 case was brought against him.

10 57. On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed
11 door, 24-hour pharmacy servicing skilled nursing facilities, board and care facilities and hospices,
12 in the presence of Respondent Chang and A.H. No additional information related to the drug
13 losses was found by the Board's Inspector, who completed the inspection and issued an
14 Inspection Report.

15 58. The Board obtained police reports and court documents related to the criminal case
16 brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which
17 indicated the following:

18 59. On or about January 27, 2016, a law enforcement officer from the Monrovia Police
19 Department met with Pharmacist A.H., who indicated that she employs 150 people consisting of
20 pharmacy supervisors, delivery drivers and people who fill medication to be shipped to hospitals.

21 The company is open 24 hours per day, seven days a week. A pharmacist has to buzz/unlock the
22 door to allow employees to enter the building. A.H. reported that, on November 5, 2015,¹ she
23 discovered a large quantity of medication was missing from Partner Healthcare's drug supply
24 inventory. A.H. reviewed the medication orders from November 20, 2014, at 17:45 hours, to
25 November 5, 2015, at 17:45 hours, and noticed several suspicious orders made by a possible
26 suspect, O.B., a pharmacy technician. His job consisted of ordering medication via the Internet

27 ¹ Although the police report indicates that she discovered the large quantity of missing
28 controlled substances on November 5, 2016, it is reasonable to infer that it should have read
"2015".

1 and filling medication orders to be shipped. A.H. believed O.B. made the orders because the
2 dates and times when the orders were placed matched his work schedule. The drugs that were
3 missing also matched the ones on the highlighted spreadsheet. A.H. stated that, in January 2016,
4 O.B. quit right after his shift ended without giving notice. At that time, A.H. suspected that O.B.
5 may have stolen the medications, because he abruptly resigned without providing two-weeks'
6 notice, around the time the pharmacy was auditing its inventory. A.H. said she has video
7 surveillance, but it does not depict the shelf where the listed medication was stored or the suspect
8 taking the medication.

9 60. On February 2, 2016, a law enforcement officer from the Monrovia Police
10 Department met with A.H., who told him that she recalled, in November, 2015, an on-duty
11 pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing from
12 the inventory. A.H. began monitoring her employees and auditing the pharmacy's inventory on a
13 weekly basis. Her audits between November 2014 and November 2015 indicated that
14 approximately \$13,278.00 of Codeine cough syrup and Xanax pills were missing from the
15 pharmacy's inventory. A.H. noticed an unusual trend in purchases, in that only one or two items
16 were ordered per purchase form during the graveyard shift, whereas the standard practice for
17 pharmacy purchases was for the on-duty purchaser to open one purchase order at the beginning of
18 the shift and add items to the same purchase order throughout the shift.

19 61. Furthermore, A.H. was informed by employees that an employee (Nestor Sanchez)
20 was bragging about paying \$1,000 for a hotel room in Las Vegas. A.H. also observed that
21 Sanchez had been coming into work late, working fewer hours each week and leaving work early.
22 Around December 2015, A.H. terminated Sanchez' employment with Partner Healthcare.

23 62. On or about February 10, 2016, a law enforcement officer with the Monrovia Police
24 Department interviewed Sanchez, who told him he had worked at Partner Healthcare from April
25 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015, Sanchez
26 admitted he began stealing two to three bottles of Codeine cough syrup and selling them to his
27 friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his
28 friends. Sanchez stated that he stopped stealing in mid-October 2015 because he believed his

1 employer became aware of the shortage in the narcotics inventory. Sanchez told the officer he
2 knew he made bad choices and felt embarrassed. He stole because he was in need of money and
3 acted alone. Sanchez provided the officer with his statement in writing and wrote an apology
4 letter to Partner Healthcare.

5 63. Between July 2014 and December 2015, Partner Healthcare lost track of a large
6 amount of the inventory of Xanax and Promethazine, which demonstrates that there were no
7 meaningful measures in place during the time in question to prevent the loss, theft or diversion of
8 drugs by employees. The Xanax and Promethazine were on a shelf, not locked up, and there were
9 no cameras surveilling the area where they were placed in the pharmacy. Moreover, there were
10 no adequate policies or procedures in place to prevent pharmacy technicians from ordering these
11 controlled substances and/or taking possession of them upon delivery.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Respondent Partner Healthcare - Failure to Maintain Effective
14 Control and Security of Dangerous Drugs/Controlled Substances)**

15 64. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005,
16 4300 and 4301, subdivisions (o) and/or (j), in that Respondent violated California Code of
17 Regulations, title 16, section 1714, subdivision (b) and Code of Federal Regulations, title 21,
18 section 1301.75, subdivision (b), by failing to maintain the pharmacy and its facilities, space,
19 fixtures and/or equipment so that drugs/controlled substances were safely and properly secured,
20 as follows:

21 a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to
22 ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and
23 Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of
24 approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg
25 showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015.
26 The allegations set forth above in Paragraphs 52-63 are incorporated by reference herein.

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SECOND CAUSE FOR DISCIPLINE
**(Respondent Chang – Failure to Maintain Effective
Control and Security of Dangerous Drugs/Controlled Substances)**

65. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and (j), in conjunction with Sections 4036.5, 4105, 4156 and 4113, subdivision (c) and 1709.1, subdivision (a), for violating California Code of Regulations, title 16, section 1714, subdivision (d), and Code of Federal Regulations, title 21, section 1301.75, in that, while employed as the PIC of Partner Healthcare, Respondent failed to maintain the pharmacy and its facilities, space, fixtures and/or equipment so that drugs/controlled substances were safely and properly secured, as follows:

a. Between on or about July 2, 2014 and December 10, 2015, Respondent failed to ensure the security of the dangerous drugs/controlled substances, Alprazolam 2 mg and Promethazine with Codeine syrup. An audit of Promethazine with Codeine showed a loss of approximately 839,440 ml (approximately 1,775 bottles) and an audit of Alprazolam 2 mg showed a loss of 76,263 tablets, based on records from July 2, 2014 through December 10, 2015. The allegations set forth above in Paragraphs 52-63 are incorporated by reference herein.

THIRD CAUSE FOR DISCIPLINE
**(Respondent Partner Healthcare – Failure to Maintain and/or
Produce Required Records)**

66. Respondent Partner Healthcare is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), 4105 and 4156, in conjunction with California Code of Regulations, title 16, section 1718, in that Respondent Partner Healthcare violated Sections 4081, subdivision (a) and 4332, by failing to maintain required records and/or produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 52-63 are incorporated by reference herein.

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FOURTH CAUSE FOR DISCIPLINE
**(Respondent Chang –Failure to Maintain and/or Produce
Maintain Required Records)**

67. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4036.5, for violating Sections 4081, subdivisions (a) and (b), 4105 and 4332, and California Code of Regulations, title 16, section 1709.1, subdivision (a), in that, while employed as PIC of Partner Healthcare, Respondent failed to maintain required records for Partner Healthcare and/or produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 52-63 are incorporated by reference herein.

FIFTH CAUSE FOR DISCIPLINE
**(Respondents Hwang, Garner and Thai –Failure to Provide
and/or Maintain Required Records)**

68. Respondents Hwang, Garner and Thai are subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), for violating Sections 4081, subdivisions (a) and (b) and 4105, in that, Hwang, while employed as the Pharmacy Director and Treasurer/Chief Financial Officer of Partner Healthcare, and Garner and Thai, while employed as Owners of Partner Healthcare, failed to maintain required records for Partner Healthcare and/or produce them to the Board, for Promethazine with Codeine and Alprazolam 2 mg, between July 2, 2014 and December 10, 2015. The allegations set forth above in Paragraphs 52-63 are incorporated by reference herein.

SIXTH CAUSE FOR DISCIPLINE
**(Respondent Sanchez - Conviction of
a Substantially Related Crime)**

69. Respondent Sanchez is subject to disciplinary action under Sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about July 25, 2016, Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft of

1 personal property] in the criminal proceeding entitled *The People of the State of California v.*
2 *Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse, 2016, No.
3 GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles County Jail,
4 placed him on five years' formal probation, and ordered him to pay restitution to the victim,
5 among other terms and conditions. The circumstances surrounding the conviction are set forth
6 above, in Paragraphs 52-63, and are incorporated herein by reference.

7 **SEVENTH CAUSE FOR DISCIPLINE**
8 **(Respondent Sanchez - Acts Involving**
9 **Dishonesty, Fraud, or Deceit)**

10 70. Respondent Sanchez is subject to disciplinary action under Section 4301,
11 subdivision (f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to
12 substantially benefit himself, or substantially injure another, when he stole Promethazine with
13 Codeine syrup and Alprazolam 2 mg between approximately April 2015 and October 2015 from
14 his employer, as alleged above in Paragraphs 52-63, which are incorporated herein by reference.

15 **EIGHTH CAUSE FOR DISCIPLINE**
16 **(Respondent Sanchez - Illegal Possession of Prescription**
17 **Drugs Without a Valid Prescription)**

18 71. Respondent Sanchez is subject to disciplinary action under Section 4301,
19 subdivisions (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158,
20 subdivision (a), and 11171, in that, between approximately April 2015 and October 2015,
21 Respondent was in possession of prescription drugs without a valid prescription. Complainant
22 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 52-63.

23 **NINTH CAUSE FOR DISCIPLINE**
24 **(Respondent Sanchez – Furnishing Prescription Drugs**
25 **To Others Without a Valid Prescription)**

26 72. Respondent Sanchez is subject to disciplinary action under Section 4301,
27 subdivisions (j) and/or (o), for violating Section 4059, subdivisions (a), in that, between
28 approximately April 2015 and October 2015, he illegally sold and/or transferred stolen
prescription drugs to his friends, without a valid prescription. Complainant refers to, and by this
reference incorporates, the allegations set forth above in Paragraphs 52-63.

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TENTH CAUSE FOR DISCIPLINE
(Respondent Chang - Failure to Exercise or Implement Best Professional Judgment)

73. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), for unprofessional conduct pursuant to Sections 4036.5, 4059, 4059.5, 4060, 4081, 4113, subdivision (c), 4301 and 4306.5, subdivisions (a) through (c), in that Respondent, while acting as the PIC of Partner Healthcare, failed to appropriately exercise his education, training, or experience as a pharmacist and failed to exercise or implement his best professional judgment with regard to securing, dispensing, accounting for and/or furnishing the dangerous drugs/controlled substances Alprazolam 2 mg and Promethazine with Codeine syrup and failed to consult appropriate patient, prescription, and other records for these drugs, as set forth in Paragraphs 52-63 above, which are incorporated herein by reference.

ELEVENTH CAUSE FOR DISCIPLINE
(Respondents Partner Healthcare, Thai and Garner – Failure to Notify Board of Loss of Controlled Substances)

74. Respondents Partner Healthcare, Garner and Thai are subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Sections 4156, for violating title 16, California Code of Regulations, section 1715.6, in that Respondents Partner Healthcare and Garner and Thai, while employed as Owners of Partner Healthcare, failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. The facts supporting this cause are specified in Paragraphs 52-63 above and incorporated herein by reference.

TWELFTH CAUSE FOR DISCIPLINE
(Respondent Chang – Failure to Notify Board of Loss of Controlled Substances)

75. Respondent Chang is subject to disciplinary action under Sections 4005, 4300 and 4301, subdivisions (o) and/or (j), in conjunction with Section 4113, subdivision (c), for violating title 16, California Code of Regulations, section 1715.6, in that Respondent failed to report the loss of Alprazolam 2 mg and Promethazine with Codeine syrup to the Board within 30 days of the loss of controlled substances. On January 4, 2016, Chang reported the loss of controlled

1 substances to the Board; however, he knew or reasonably should have known of the loss of a
2 large quantity of controlled substances/dangerous drugs by no later than November 20, 2015.
3 The facts supporting this cause are specified in Paragraphs 52-63 above and incorporated herein
4 by reference.

5 **FACTS RELATED TO ANNUAL RENEWAL INSPECTION**
6 **OF PHARMACY ON AUGUST 1, 2017 AND INVESTIGATION**

7 76. On August 1, 2017, a Board Inspector conducted an annual sterile compounding
8 renewal inspection at Respondent Partner Healthcare. The pharmacy is described as a very large
9 “Closed Door” pharmacy providing both sterile compounds and non-sterile medications to
10 approximately 4,500 consumers residing in either a skilled nursing facility or assisted living
11 home. Pharmacist A.H. was present and assisted with the inspection.

12 77. In the area where sterile compounding was conducted, the Board’s Inspector
13 inspected the contents stored inside a refrigerator which included two dozen, previously frozen,
14 manufacturer prepared Cefazolin 1 gm IVPB (injectable) that were thawed and in liquid form.
15 Each Cefazolin had a sticker on it indicating the expiration date of the product was 9/30/17.
16 However, the manufacturer expiration date on the product label clearly stated “Thawed solution is
17 stable for 30 days under refrigeration and 48 hours at room temperature.”

18 78. A.H. could not explain why each Cefazolin was given a 60-day expiration date. The
19 Board’s Inspector asked A.H. to provide a policy and procedure for thawing frozen antibiotics
20 which she did. The policy and procedure clearly stated the Cefazolin solution was stable for 30
21 days under refrigeration and 48 hours at room temperature. A.H. was again asked to explain why
22 the Cefazolin were misbranded. She summoned Pharmacy Technician D.M., who stated he
23 placed the expiration date on the Cefazolin bags, but must have inadvertently used an incorrect
24 date.

25 79. The Board’s Inspector discussed with A.H. her findings of the inspection and areas
26 which were noncompliant and for which corrections were issued, including but not limited to the
27 lack of documentation that PIC Chang had reviewed the policies and procedures annually or how
28 the staff were notified of changes to them. The Board’s Inspector requested that A.H. provide her

1 with evidence of an annual quantitative analysis ensuring integrity, potency, quality, and labeled
2 strength. A.H. was able to locate reports from Eagle Analytical Services dated 8/07/15 and
3 7/20/17, but was not able to locate a report indicating the quality assurance review was performed
4 in 2016. A.H. telephoned PIC Chang, and then informed the Board's Inspector the two reports
5 she presented were the only ones they had.

6 80. At the conclusion of her inspection on August 1, 2017, the Board's Inspector issued a
7 written notice of noncompliance for the following violations: (1) Section 4342, for drugs which
8 do not conform to the standard and tests as to quality and strength, for having 24 previously
9 frozen Cefazolin 1 gm IVPB found thawed in a refrigerator with an expiration date of 9/30/17
10 affixed, when the manufacturer states the product is only good for 30 days once thawed; and
11 (2) California Code of Regulations, title 16, section 1735.8, subdivision (c), in that documentation
12 provided for the pharmacy indicated a compounded product had quantitative analysis performed
13 on 8/07/15, then on 7/20/17, which showed that the quantitative analysis was not performed on at
14 least an annual basis.

15 81. In the Inspection Report, PIC Chang was requested to fax or email additional
16 documents, including but not limited to revised policies and procedures which reflected
17 compliance with Sections 1735.5, subdivisions (d) & (e) and 1735.8, subdivision (d). On or
18 about August 13, 2017, Chang emailed the Board's Inspector revisions to the pharmacy's sterile
19 compounding policies and procedures.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**
21 **(Respondent Partner Healthcare – Non-Conforming
22 Dangerous Drugs Lacking Quality and Strength)**

23 82. Respondent Partner Healthcare's Pharmacy Permit is subject to disciplinary action
24 under Sections 4156, 4300 and 4301, subdivision (o), for violating Section 4342, subdivisions (a)
25 and/or (b). The circumstances are that, on or about August 1, 2017, during an inspection by the
26 Board's Inspector at Partner Healthcare there were dangerous drugs, 24 previously frozen Cefazolin
27 1 gm IVPB in stock, in the area where sterile compounding was conducted, which were incorrectly
28 labelled with an expiration date of September 30, 2017 (60 days) affixed, when the manufacturer

1 of the product stated the Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth
2 above in greater detail in Paragraphs 76-81, which allegations are incorporated here fully by
3 reference. The 24 thawed Cefazolin 1 gm IVPB did not conform to the standard and tests as to
4 quality and strength, provided in the latest edition of the U.S. Pharmacopoeia or the National
5 Formulary and/or there was a knowing or willful violation of a regulation or regulations adopted
6 pursuant to Section 4006.

7 **FOURTEENTH CAUSE FOR DISCIPLINE**
8 **(Respondent Chang - Non-Conforming Dangerous**
9 **Drugs Lacking Quality and Strength)**

10 83. Respondents PIC Chang is subject to disciplinary action under Sections 4036.5, 4113,
11 subdivision (c), 4300 and 4301, subdivision (o), for violating Section 4342, subdivision (a). The
12 circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector
13 at Partner Healthcare there were dangerous drugs, 24 previously frozen Cefazolin 1 gm IVPB in
14 stock, in the area where sterile compounding was conducted, which were incorrectly labelled with
15 an expiration date of September 30, 2017 (60 days) affixed, when the manufacturer of the product
16 stated the Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth above in
17 greater detail in Paragraphs 76-81, which allegations are incorporated here fully by reference. The
18 24 thawed Cefazolin 1 gm IVPB did not conform to the standard and tests as to quality and strength,
19 provided in the latest edition of the U.S. Pharmacopoeia or the National Formulary and/or there
20 was a knowing or willful violation of a regulation or regulations adopted pursuant to Section 4006.

21 84. Pursuant to Section 4113, subdivision (c), Respondent Chang, as the PIC during the
22 relevant time period, is liable for his failure to adequately supervise his employees, and institute
23 and follow adequate policies and procedures to ensure that all compounded drugs and dangerous
24 drugs, including the 24 thawed Cefazolin 1 gm IVPB, were properly labelled, and conformed in
25 quality and strength to the manufacturer's specifications and all applicable state and federal
26 regulations.

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FIFTEENTH CAUSE FOR DISCIPLINE
(Respondent Partner Healthcare - Quality Assurance)

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85. Respondent Partner Healthcare's Pharmacy Permit is subject to disciplinary action under Sections 4156, 4300 and 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1735.8, subdivision (c), in conjunction with California Code of Regulations, title 16, sections 1735.2, subdivision (h) and 1735.6, subdivision (a). The circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector at Partner Healthcare and investigation, it was determined that Respondent did not ensure integrity, potency, quality and labeled strength of dangerous drugs at least once annually, between 8/7/15 and 7/20/17, as set forth above in greater detail in Paragraphs 76-81, which allegations are incorporated here fully by reference.

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SIXTEENTH CAUSE FOR DISCIPLINE
(Respondents Chang - Quality Assurance)

86. Respondent PIC Chang is subject to disciplinary action under Sections 4036.5, 4113, 4300 and 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1735.8, subdivision (c), in conjunction with California Code of Regulations, title 16, sections 1735.2, subdivision (h) and 1735.6, subdivision (a) and Section 4081, subdivision (b). The circumstances are that, on or about August 1, 2017, during an inspection by the Board's Inspector at Partner Healthcare and investigation, it was determined that Respondent did not ensure integrity, potency, quality and labeled strength of dangerous drugs (24 previously frozen Cefazolin 1 gm IVPB) at least once annually, between 8/7/15 and 7/20/17,

87. Pursuant to Section 4113, Respondent Chang, as the PIC of the pharmacy during the relevant time period, is liable for his failure and/or that of the pharmacy's employees to ensure integrity, potency, quality and labeled strength of compounded products. The pharmacy's policies and procedures shall be reviewed and such review shall be documented on an annual basis by the PIC. Respondent Chang did not document he reviewed the pharmacy's policies and procedures annually or how staff were notified of any changes to them. The allegations as set forth above in greater detail in Paragraphs 76-81, are incorporated here fully by reference.

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2 **DISCIPLINE CONSIDERATIONS**

3 88. To determine the degree of discipline, Complainant alleges as follows:

4 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014
5 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the
6 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in
7 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the
8 citation. The citation was paid in full and became the final order.

9 b. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
10 65972 against Respondent Partner Healthcare for failing to prevent the sale of drugs lacking in
11 quality and for taking back medications from assisted living facilities and placing them into
12 containers to be dispensed to other patients, in violation of Section 4342, subdivision (a) and
13 Health and Safety Code section 111440. A fine in the amount of \$2,000 was issued with the
14 citation. The citation was paid in full and became the final order.

15 c. On or about February 24, 2016, the Board issued administrative Citation No. CI 2015
16 69197 against Respondent Henry Hung Yat Chang for failing to ensure that he, as PIC for Partner
17 Healthcare, did not exceed the pharmacist to pharmacy technician ratio of 2:1 between June 14,
18 2015 and June 20, 2015, in violation of Section 4115, subdivision (f)(1). A fine in the amount of
19 \$5,000 was issued with the citation. The citation was paid in full and became the final order.

20 d. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
21 65972 against Respondent Henry Hung Yat Chang for failing to prevent the sale of drugs lacking
22 in quality and for taking back medications from assisted living facilities and placing them into
23 containers to be dispensed to other patients, while he was PIC for Partner Healthcare, in violation
24 of Section 4342, subdivision (a) and Health and Safety Code section 111440. A fine in the
25 amount of \$2,000 was issued with the citation. The citation was paid in full and became the final
26 order.

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1 **OTHER MATTERS**

2 89. Pursuant to Section 4307 of the Code, if discipline is imposed on Pharmacy Permit
3 Number PHY 51078 issued to Partner Healthcare, Inc. while Hwang, Garner and/or Thai have
4 been an officer, director, or owner and had knowledge of or knowingly participated in any
5 conduct for which the licensee was disciplined, Partner Healthcare, Hwang, Garner and/or Thai
6 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
7 associate, partner, or in any other position with management or control of a licensee for five years
8 if Pharmacy Permit Number PHY 51078 is placed on probation or until Pharmacy Permit Number
9 PHY 51078 is reinstated if it is revoked.

10 **PRAYER**

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

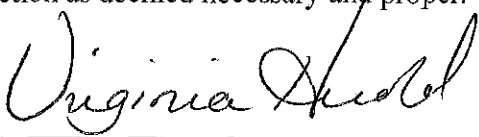
- 13 1. Revoking or suspending Pharmacy Permit Number PHY 51078, issued to Partner
14 Healthcare, Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner;
- 15 2. Revoking or suspending Pharmacist Permit Number RPH 53723, issued to Henry
16 Hung Yat Chang;
- 17 3. Revoking or suspending Pharmacist Permit Number RPH 53940, issued to Ammie
18 Hwang;
- 19 4. Revoking or suspending Pharmacist Permit Number RPH 53680, issued to Brian
20 Tracy Garner;
- 21 5. Revoking or suspending Pharmacist Permit Number RPH 53678, issued to Khanh-
22 Long Thai;
- 23 6. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,
24 issued to Nestor Daniel Sanchez;
- 25 7. Prohibiting Partner Healthcare, Inc., Khanh-Long Thai, Ammie Hwang and Brian
26 Garner from serving as a manager, administrator, owner, member, officer, director, associate,
27 partner, or in any other position with management or control of a licensee for five years if

1 Pharmacy Permit Number PHY 51078 is placed on probation or until Pharmacy Permit Number
2 PHY 51078 issued to Partner Healthcare, Inc. is reinstated if it is revoked.

3 8. Ordering Partner Healthcare, Inc., Henry Hung Yat Chang; Khanh-Long Thai;
4 Ammie Hwang; and Brian Garner, jointly and severally, to pay the Board of Pharmacy the
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3; and,

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

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9 DATED: 8/31/18



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

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7

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

11 In the Matter of the Accusation Against:

Case No. 6176

12 **PARTNER HEALTHCARE, INC.; HENRY**
13 **HUNG YAT CHANG; KHANH-LONG**
14 **THAI; AMMIE HWANG; BRIAN**
15 **GARNER**
16 **2035 S. Myrtle Ave.**
17 **Monrovia, CA 91016**

FIRST AMENDED ACCUSATION

18 **Pharmacy Permit No. PHY 51078**

19 AND

20 **PARTNER HEALTHCARE, INC.; HENRY**
21 **HUNG YAT CHANG; KHANH-LONG**
22 **THAI; AMMIE HWANG; BRIAN**
23 **GARNER**
24 **2035 S. Myrtle Ave.**
25 **Monrovia, CA 91016**

26 **Licensing Sterile Compounding No. LSC**
27 **99777**

28 AND

HENRY HUNG YAT CHANG
2035 S. Myrtle Ave.
Monrovia, CA 91016

Pharmacist License No. RPH 53723

AND

1 **AMMIE HWANG**
2 **3948 N. Peck Road #A1**
3 **El Monte, CA 91732**

4 **Pharmacist License No. RPH 53940**

5 AND

6 **BRIAN TRACY GARNER**
7 **137 No. Harvard Ave.**
8 **Claremont, CA 91711**

9 **Pharmacist License No. RPH 53680**

10 AND

11 **KHANH-LONG THAI**
12 **3948 N. Peck Road #A1**
13 **El Monte, CA 91732**

14 **Pharmacist License No. RPH 53678**

15 AND

16 **NESTOR DANIEL SANCHEZ**
17 **13728 Olive St.**
18 **Baldwin Park, CA 91706**

19 **Pharmacy Technician Registration No. TCH**
20 **123802**

21 Respondent.

22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078
28 to Partner Healthcare Inc.; Henry Hung Yat Chang; Khanh-Long Thai; Ammie Hwang; Brian
Garner (Respondent and/or Partner Healthcare and/or the pharmacy). The Pharmacy Permit was
in full force and effect at all times relevant to the charges brought herein and will expire on
October 1, 2018, unless renewed.

1 3. On or about April 12, 2013, the Board issued Sterile Compounding Permit Number
2 LSC 99777 to Partner Healthcare Inc. doing business as Partner Healthcare Inc.; Henry Hung Yat
3 Chang; Khanh-Long Thai; Ammie Hwang; Brian Garner (Respondent). The Sterile
4 Compounding Permit was in full force and effect at all times relevant to the charges brought
5 herein and will expire on October 31, 2018, unless renewed.

6 4. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
7 53723 to Henry Hung Yat Chang (Respondent). The Pharmacist License was in full force and
8 effect at all times relevant to the charges brought herein and will expire on October 31, 2019,
9 unless renewed. Chang is and has been the Pharmacist-in-Charge (PIC) of the pharmacy since
10 October 2, 2012.

11 5. On or about August 28, 2002, the Board issued Pharmacist License Number RPH
12 53940 to Ammie Hwang (Respondent). The Pharmacist License was in full force and effect at all
13 times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.
14 Hwang is and has been the Treasurer/Chief Financial Officer of the pharmacy since July 19,
15 2013.

16 6. On or about April 12, 2002, the Board issued Pharmacist License Number RPH
17 53680 to Brian Tracy Garner (Respondent). The Pharmacist License was in full force and effect
18 at all times relevant to the charges brought herein and will expire on April 30, 2018, unless
19 renewed. Garner is and has been the Vice President and 32% shareholder of the pharmacy since
20 October 2, 2012.

21 7. On or about September 23, 2002, the Board issued Pharmacist License Number RPH
22 53678 to Khanh-Long Thai (Respondent). The Pharmacist License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on December 31, 2019, unless
24 renewed. Thai is and has been the Chief Executive Officer and President and 52% shareholder of
25 the pharmacy since July 19, 2013.

26 8. On or about May 24, 2012, the Board issued Pharmacy Technician Registration
27 Number TCH 123802 to Nestor Daniel Sanchez (Respondent). The Pharmacy Technician
28

1 Registration was in full force and effect at all times relevant to the charges brought herein and
2 expired on December 31, 2017.

3 JURISDICTION

4 9. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 10. Under Section 4300, the Board may discipline any license, for any reason provided in
7 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

8 11. Section 4300.1 states:

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

15 12. Section 4402, subdivision (a) provides that any pharmacist license that is not
16 renewed within three years following its expiration may not be renewed, restored, or reinstated
17 and shall be canceled by operation of law at the end of the three-year period. Under Section
18 4402, subdivision (d), the Board has authority to proceed with an accusation that has been filed
19 prior to the expiration of the three-year period.

20 STATUTORY PROVISIONS

21 13. Section 490 states, in pertinent part:

22 (a) In addition to any other action that a board is permitted to take against a
23 licensee, a board may suspend or revoke a license on the ground that the licensee has
24 been convicted of a crime, if the crime is substantially related to the qualifications,
25 functions, or duties of the business or profession for which the license was issued.

26 (b) Notwithstanding any other provision of law, a board may exercise any
27 authority to discipline a licensee for conviction of a crime that is independent of the
28 authority granted under subdivision (a) only if the crime is substantially related to the
29 qualifications, functions, or duties of the business or profession for which the
30 licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a plea of nolo contendere. An action that a board is
permitted to take following the establishment of a conviction may be taken when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on
appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

1 (d) The Legislature hereby finds and declares that the application of this section
2 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
3 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
4 number of statutes and regulations in question, resulting in potential harm to the
5 consumers of California from licensees who have been convicted of crimes.
6 Therefore, the Legislature finds and declares that this section establishes an
7 independent basis for a board to impose discipline upon a licensee, and that the
8 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
9 constitute a change to, but rather are declaratory of, existing law.

10 14. Section 4022 states, in pertinent part:

11 "Dangerous drug" or "dangerous device" means any drug or device unsafe
12 for self-use in humans or animals, and includes the following:

13 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
14 without prescription," "Rx only," or words of similar import.

15 (b) Any device that bears the statement: "Caution: federal law restricts this
16 device to sale by or on the order of a _____," "Rx only," or words of similar
17 import, the blank to be filled in with the designation of the practitioner licensed to
18 use or order use of the device.

19 (c) Any other drug or device that by federal or state law can be lawfully
20 dispensed only on prescription or furnished pursuant to Section 4006.

21 15. Section 4036.5 states that "'Pharmacist-in-charge' means a pharmacist proposed by a
22 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
23 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice
24 of pharmacy."

25 16. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous
26 drug or dangerous device except upon the prescription of an authorized prescriber.

27 17. Section 4060 states, in pertinent part:

28 No person shall possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor . . . This section shall not apply to the possession
of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
correctly labeled with the name and address of the supplier or producer.

18. Section 4081 provides, in relevant part, that:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, or
disposition of dangerous drugs...

(b) The owner, officer, or partner of a pharmacy ... shall be jointly responsible,
with the pharmacist-in-charge, responsible manager ... for maintaining the records

and inventory described in this section.

1
2 19. Section 4105 states, in pertinent part, that "(a) All records or other documentation of
3 the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed
4 by the board shall be retained on the licensed premises in a readily retrievable form."

5 20. Section 4113 states, in pertinent part, that: "(c) The pharmacist-in-charge shall be
6 responsible for a pharmacy's compliance with all state and federal laws and regulations
7 pertaining to the practice of pharmacy."

8 21. Section 4301 of the Code states, in pertinent part:

9 The board shall take action against any holder of a license who is guilty of
10 unprofessional conduct. . . Unprofessional conduct shall include, but is not limited
11 to, any of the following:

12 * * * *

13 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
14 deceit, or corruption, whether the act is committed in the course of relations as a
15 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

18 * * * *

19 (l) The conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. The record of conviction of
21 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
22 States Code regulating controlled substances or of a violation of the statutes of this
23 state regulating controlled substances or dangerous drugs shall be conclusive
24 evidence of unprofessional conduct. In all other cases, the record of conviction
25 shall be conclusive evidence only of the fact that the conviction occurred. The
26 board may inquire into the circumstances surrounding the commission of the
27 crime, in order to fix the degree of discipline or, in the case of a conviction not
28 involving controlled substances or dangerous drugs, to determine if the conviction
is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
subsequent order under Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

* * * *

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

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22. Section 4342 provides, in relevant part, that:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law...

(b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006 shall be subject to punishment in the same manner as is provided in Sections 4321 and 4336.

23. Health and Safety Code section 11158, subdivision (a), states:

Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

24. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

REGULATORY PROVISIONS

25. California Code of Regulations, title 16, section 1709.1 provides that: "(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy."

26. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) provides that:

* * * *

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

* * * *

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

1 27. California Code of Regulations, title 16, section 1718, provides that:

2 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

4 The controlled substances inventories required by Title 21, CFR, Section 1304
5 shall be available for inspection upon request for at least 3 years after the date of the
6 inventory.

6 28. California Code of Regulations, title 16, section 1735.2, subsection (h), states:

7 Every compounded drug product shall be given an expiration date representing
8 the date beyond which, in the professional judgment of the pharmacist performing or
9 supervising the compounding, it should not be used. This "beyond use date" of the
10 compounded drug product shall not exceed 180 days from preparation or the shortest
11 expiration date of any component in the compounded drug product, unless a longer
12 date is supported by stability studies of finished drugs or compounded drug products
13 using the same components and packaging. Shorter dating than set forth in this
14 subsection may be used if it is deemed appropriate in the professional judgment of the
15 responsible pharmacist.

12 29. California Code of Regulations, title 16, section 1735.4, subsection (b), states:

13 "A statement that the drug has been compounded by the pharmacy shall be included on the
14 container or on the receipt provided to the patient."

15 30. California Code of Regulations, title 16, section 1735.6, subsection (a), states:

16 "Any pharmacy engaged in compounding shall maintain written documentation regarding
17 the facilities and equipment necessary for safe and accurate compounded drug products. Where
18 applicable, this shall include records of certification(s) of facilities or equipment."

19 31. California Code of Regulations; title 16, section 1735.8, states, in pertinent part:

20 (a) Any pharmacy engaged in compounding shall maintain, as part of its written
21 policies and procedures, a written quality assurance plan designed to monitor and
22 ensure the integrity, potency, quality, and labeled strength of compounded drug
23 preparations.

23 (b) The quality assurance plan shall include written procedures for verification,
24 monitoring, and review of the adequacy of the compounding processes and shall also
25 include written documentation of review of those processes by qualified pharmacy
26 personnel.

25 (c) The quality assurance plan shall include written standards for qualitative and
26 quantitative analysis of compounded drug preparations to ensure integrity, potency,
27 quality, and labeled strength, including the frequency of testing. All qualitative and
28 quantitative analysis reports for compounded drug preparations shall be retained by
the pharmacy and maintained along with the compounding log and master formula
document. The quality assurance plan shall include a schedule for routine testing and
analysis of specified compounded drug preparations to ensure integrity, potency,

1 quality, and labeled strength, on at least an annual basis.

2 (d) The quality assurance plan shall include a written procedure for scheduled
3 action in the event any compounded drug product is ever discovered to be below
4 minimum standards for integrity, potency, quality, or labeled strength.

5 32. California Code of Regulations, title 16, section 1770, states, in pertinent part:

6 For the purpose of denial, suspension, or revocation of a personal or facility
7 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
8 Professions Code, a crime or act shall be considered substantially related to the
9 qualifications, functions or duties of a licensee or registrant if to a substantial degree
10 it evidences present or potential unfitness of a licensee or registrant to perform the
11 functions authorized by his license or registration in a manner consistent with the
12 public health, safety, or welfare.

13 33. California Code of Regulations, title 16, section 1793.7, subsection (d), states:

14 Any pharmacy employing or using a pharmacy technician shall develop a job
15 description and written policies and procedures adequate to ensure compliance with
16 the provisions of Article 11 of this Chapter, and shall maintain, for at least three years
17 from the time of making, records adequate to establish compliance with these sections
18 and written policies and procedures.

19 34. Code of Federal Regulations, title 21, section 1304.11, subsection (c), states:

20 "Biennial inventory date. After the initial inventory is taken, the registrant shall take a new
21 inventory of all stocks of controlled substances on hand at least every two years. The biennial
22 inventory may be taken on any date which is within two years of the previous biennial inventory
23 date."

24 COST RECOVERY

25 35. Section 125.3 provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

28 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

36. "Alprazolam" (brand name – "Xanax") is a depressant and a Schedule IV controlled
37 substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is
38 categorized as a dangerous drug pursuant to Section 4022.

39 37. "Cefazolin 1 gm Sterile injectable" (brand name – "Ancef") is a dangerous drug
40 pursuant to Section 4022 and is an antibiotic.

1 38. "Promethazine with Codeine" (brand name – "Phenergan-Codeine") is a
2 dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code
3 section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

4 **BOARD'S INVESTIGATION RELATED TO REPORT OF THEFT**
5 **OF CONTROLLED SUBSTANCES FROM PHARMACY**

6 39. On or about January 4, 2016, the Board received from Respondent Chang, who was,
7 at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written
8 statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The
9 DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and
10 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence "points to employee
11 pilferage", but there was no concrete evidence to prove that. In addition, the DEA 106 report and
12 Chang's written statement indicate additional security measures were instituted by the pharmacy
13 to prevent future loss/theft, including: (1) installing additional video surveillance cameras;
14 (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all
15 controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

16 40. From February 8, 2016 to February 9, 2016, an analyst with the Board's Complaint
17 Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated
18 by email with Respondent Chang and another pharmacist employed with Partner Healthcare,
19 A.H., for the purpose of conducting an audit and records supporting the audit.

20 41. On February 8, 2016, the Board received an audit spreadsheet and supporting
21 records, including a statement from Pharmacist A.H. dated February 6, 2016, with the following
22 information:

23 • On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container
24 (500 tablets/container.)

25 • Reviewing a year of acquisition and disposition records revealed Promethazine with
26 Codeine and Alprazolam 2 mg showed discrepancies.

27 • An audit period was set by a last controlled substance inventory conducted on July 2,
28 2014 and an inventory conducted on December 10, 2015.

1 • There was an ongoing investigation with a detective at the Monrovia Police Department in
2 order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

3 42. The audit records revealed the following information:

4 • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about
5 1,775 bottles), based on records from July 2, 2014 to December 10, 2015.

6 • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records
7 from July 2, 2014 to December 10, 2015.

8 • A beginning inventory was conducted on July 1, 2014 and an ending inventory was
9 conducted on December 10, 2015.

10 • Purchasing records and a dispensing history for Alprazolam 2 mg were included.

11 • Purchasing records and a dispensing history for Promethazine with Codeine were
12 included.

13 • The submitted supporting audit records were reconciled with the spreadsheet and the drug
14 discrepancies.

15 43. From March 31, 2016 to April 12, 2016, Complaint Unit Analyst T.R. and
16 Respondent Hwang communicated via email about an employee's theft of drugs from Partner
17 Healthcare. The suspect, former Pharmacy Technician Nestor Sanchez, was identified by the
18 Monrovia Police Department and a criminal case was brought against him.

19 44. On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed
20 door, 24-hour pharmacy servicing skilled nursing facilities, board and care facilities and hospices,
21 in the presence of Respondent Chang and Respondent Hwang. No additional information related
22 to the drug losses was found by the Board's Inspector, who completed the inspection and issued
23 an Inspection Report.

24 45. The Board obtained police reports and court documents related to the criminal case
25 brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which
26 indicated the following:

27 46. On or about January 27, 2016, a law enforcement officer from the Monrovia Police
28 Department met with Pharmacist A.H., who reported that she discovered a large quantity of

1 medication was missing from Partner Healthcare's drug supply inventory, on November 20, 2014.
2 At that time, A.H. suspected that a Pharmacy Technician, O.B., may have stolen the medications,
3 because he abruptly resigned without providing two-weeks' notice, around the time the pharmacy
4 was auditing its inventory.

5 47. On February 2, 2016, a law enforcement officer from the Monrovia Police
6 Department met with A.H., who told him that she recalled, in November, 2015, an on-duty
7 pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing from
8 the inventory. A.H. began monitoring her employees and auditing the pharmacy's inventory on a
9 weekly basis. Her audits between November 2014 and November 2015 indicated that
10 approximately \$13,278.00 of Codeine cough syrup and Xanax pills were missing from the
11 pharmacy's inventory. A.H. noticed an unusual trend in purchases, in that only one or two items
12 were ordered per purchase form during the graveyard shift, whereas the standard practice for
13 pharmacy purchases was for the on-duty purchaser to open one purchase order at the beginning of
14 the shift and add items to the same purchase order throughout the shift.

15 48. Furthermore, A.H. was informed by employees that an employee (Nestor Sanchez)
16 was bragging about paying \$1,000 for a hotel room in Las Vegas. A.H. also observed that
17 Respondent Sanchez had been coming into work late, working fewer hours each week and
18 leaving work early. Around December 2015, A.H. terminated Sanchez' employment with Partner
19 Healthcare due to his attendance issues. Moreover, A.H. suspected that Sanchez was responsible
20 for the missing Codeine cough syrup and Xanax pills. At that time, A.H. suspected Sanchez may
21 have had assistance from other employees to steal the drugs from Partner Healthcare. However,
22 three employees of Partner Healthcare gave statements to the police and they were ruled out as
23 suspects.

24 49. On or about February 10, 2016, a law enforcement officer with the Monrovia Police
25 Department interviewed Respondent Sanchez, who told him he had worked at Partner Healthcare
26 from April 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015,
27 Sanchez admitted he began stealing two to three bottles of Codeine cough syrup and selling them
28 to his friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his

1 friends. Sanchez stopped stealing in mid-October 2015 because he believed his employer became
2 aware of the shortage in the narcotics inventory. Sanchez told the officer he knew he made bad
3 choices and felt embarrassed. He stole because he was in need of money and acted alone.
4 Sanchez provided the officer with his statement in writing and wrote an apology letter to Partner
5 Healthcare. Based upon the officer's investigation and Sanchez' confession, he believed that
6 Sanchez committed grand theft of medications while employed by Partner Healthcare, for a six-
7 month period of time from April 2015 through October 2015, and the case was referred for
8 criminal prosecution of Sanchez for his crime.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Respondent Partner Healthcare - Failure to Maintain
Effective Control and Security of Dangerous Drugs)**

11 50. Respondent Partner Healthcare is subject to disciplinary action under Section 4301,
12 subsections (o) and/or (j), in that Respondent violated California Code of Regulations, title 16,
13 section 1714, subsection (b), by failing to provide effective control and security against the
14 loss/theft of Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous drugs and
15 controlled substances, by Respondent Sanchez, from approximately April 2015 through October
16 2015, as set forth above in Paragraphs 39-49, which are incorporated by reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Respondent Chang – Operational Standards and Security)**

19 51. Respondent Chang is subject to disciplinary action under Section 4301, subsections
20 (o) and (j) in that, while employed as the PIC of Partner Healthcare, Respondent Chang violated
21 Sections 4113, subsection (c) and 1709.1, subsection (a), and California Code of Regulations, title
22 16, section 1714, subsection (d), by failing to provide effective control and security against the
23 loss or diversion of Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous
24 drugs/controlled substances, from the pharmacy. During an approximate six-month period
25 between April 2015 and October 2015, Respondent Sanchez stole the controlled substances from
26 his employer, Partner Healthcare Center, as set forth above in Paragraphs 39-49, incorporated
27 herein by reference.

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THIRD CAUSE FOR DISCIPLINE
**(Respondent Chang –Failure to Maintain and/or
Produce Adequate Drug Inventory Records)**

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52. Respondent Chang is subject to disciplinary action under Sections 4301, subsections (o) and/or (j) and 4113, subsection (c), as defined by California Code of Regulations, title 16, section 1718, in that, while employed as the PIC of Partner Healthcare, Respondent Chang failed to maintain current drug inventory records for Partner Healthcare and/or produce them to the Board, for Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous drugs/controlled substances, which were stolen by Respondent Sanchez from the pharmacy between approximately April 2015 and October 2015, as set forth above in Paragraphs 39-49, incorporated herein by reference.

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FOURTH CAUSE FOR DISCIPLINE
**(Respondent Sanchez - Conviction of a
Substantially Related Crime)**

53. Respondent Sanchez is subject to disciplinary action under Section 4301, subsection (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about July 25, 2016, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft of personal property] in the criminal proceeding entitled *The People of the State of California v. Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse, 2016, No. GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles County Jail, placed him on five years' formal probation, and ordered him to pay restitution to the victim, among other terms and conditions. The circumstances surrounding the conviction are set forth above, in Paragraphs 39-49, and are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE
**(Respondent Sanchez - Acts Involving
Dishonesty, Fraud, or Deceit)**

54. Respondent Sanchez is subject to disciplinary action under Section 4301, subsection (f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to substantially

1 benefit himself, or substantially injure another, when he stole Promethazine with Codeine syrup
2 and Alprazolam 2 mg between approximately April 2015 and October 2015 from his employer, as
3 alleged above in Paragraphs 39-49, which are incorporated herein by reference.

4 **SIXTH CAUSE FOR DISCIPLINE**
5 **(Respondent Sanchez - Illegal Possession of Prescription**
6 **Drugs Without a Valid Prescription)**

7 55. Respondent Sanchez is subject to disciplinary action under Section 4301, subsections
8 (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158, subsection (a),
9 and 11171, in that, between approximately April 2015 and October 2015, Respondent was in
10 possession of prescription drugs without a valid prescription. Complainant refers to, and by this
11 reference incorporates, the allegations set forth above in Paragraphs 39-49.

12 **SEVENTH CAUSE FOR DISCIPLINE**
13 **(Respondent Sanchez – Furnishing Prescription Drugs**
14 **To Others Without a Valid Prescription)**

15 56. Respondent Sanchez is subject to disciplinary action under Section 4301, subsections
16 (j) and/or (o), for violating Section 4059, subsections (a), in that, between approximately April
17 2015 and October 2015, he illegally sold and/or transferred stolen prescription drugs to his
18 friends, without a valid prescription. Complainant refers to, and by this reference incorporates,
19 the allegations set forth above in Paragraphs 39-49.

20 **FACTS RELATED TO ANNUAL RENEWAL INSPECTION**
21 **OF PHARMACY ON AUGUST 1, 2017 AND INVESTIGATION**

22 57. On August 1, 2017, a Board Inspector conducted an annual sterile compounding
23 renewal inspection at Partner Healthcare, located at 2035 S. Myrtle Avenue, Monrovia, CA
24 91016. The pharmacy is described as a very large “Closed Door” pharmacy providing both
25 sterile compounds and non sterile medications to approximately 4,500 consumers residing in
26 either a skilled nursing facility or assisted living home. Respondent Hwang was present and
27 assisted with the inspection.

28 58. In the area where sterile compounding was conducted, the Board’s Inspector opened
and inspected the contents stored inside a refrigerator. On one shelf inside was a plastic tote with
two dozen, previously frozen, manufacturer prepared Cefazolin 1 gm IVPB (injectable) that were

1 thawed and in liquid form. Each Cefazolin had a sticker on it indicating the expiration date of the
2 product was 9/30/17. However, the manufacturer expiration date on the product label clearly
3 stated "Thawed solution is stable for 30 days under refrigeration and 48 hours at room
4 temperature."

5 59. Hwang could not explain why each Cefazolin was given a 60-day expiration date.
6 The Board's Inspector asked Hwang to provide a policy and procedure for thawing frozen
7 antibiotics which she did. The policy and procedure clearly stated the Cefazolin solution was
8 stable for 30 days under refrigeration and 48 hours at room temperature. Hwang was again asked
9 to explain why the Cefazolin were misbranded. She summoned Pharmacy Technician D.M., who
10 stated he placed the expiration date on the Cefazolin bags, but must have inadvertently used an
11 incorrect date.

12 60. The Board's Inspector discussed with Hwang her findings of the inspection and areas
13 which were noncompliant and for which corrections were issued, including but not limited to the
14 lack of documentation that PIC Chang had reviewed the policies and procedures annually or how
15 the staff were notified of changes to them. The Board's Inspector requested that Hwang provide
16 her with evidence of an annual quantitative analysis ensuring integrity, potency, quality, and
17 labeled strength. Hwang was able to locate reports from Eagle Analytical Services dated 8/07/15
18 and 7/20/17, but was not able to locate a report indicating the quality assurance review was
19 performed in 2016. Hwang telephoned PIC Chang, and then informed the Board's Inspector the
20 two reports she presented were the only ones they had.

21 61. At the conclusion of her inspection on August 1, 2017, the Board's Inspector issued a
22 written notice of noncompliance for the following violations: (1) Section 4342, for drugs which
23 do not conform to the standard and tests as to quality and strength, for having 24 previously
24 frozen Cefazolin 1 gm IVPB found thawed in a refrigerator with an expiration date of 9/30/17
25 affixed, when the manufacturer states the product is only good for 30 days once thawed; and
26 (2) California Code of Regulations, title 16, section 1735.8, subsection (c), in that documentation
27 provided for the pharmacy indicated a compounded product had quantitative analysis performed
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1 on 8/07/15, then on 7/20/17, which showed that the quantitative analysis was not performed on at
2 least an annual basis.

3 62. In the Inspection Report, PIC Chang was requested to fax or email additional
4 documents, including but not limited to revised policies and procedures which reflected
5 compliance with Sections 1735.5, subsections (d) & (e) and 1735.8, subsection (d). On or about
6 August 13, 2017, Chang emailed the Board's Inspector revisions to the pharmacy's sterile
7 compounding policies and procedures.

8 **EIGHTH CAUSE FOR DISCIPLINE**
9 **(Respondent Partner Healthcare – Non-Conforming**
10 **Compounded Drugs Lacking Quality and Strength)**

11 63. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
12 are subject to disciplinary action under Section 4301, subdivision (o), for violating Section 4342,
13 subsections (a) and/or (b). The circumstances are that, on or about August 1, 2017, during an
14 inspection by the Board's Inspector at Partner Healthcare there were compounded drugs, 24
15 previously frozen Cefazolin 1 gm IVPB in stock which were incorrectly labelled with an expiration
16 date of September 30, 2017 (60 days) affixed, when the manufacturer of the product stated the
17 Cefazolin 1 gm IVPB was only good for 30 days once thawed, as set forth above in greater detail
18 in Paragraphs 57-62, which allegations are incorporated here fully by reference. The 24 thawed
19 Cefazolin 1 gm IVPB did not conform to the standard and tests as to quality and strength, provided
20 in the latest edition of the U.S. Pharmacopoeia or the National Formulary and/or there was a
21 knowing or willful violation of a regulation or regulations adopted pursuant to Section 4006.

22 **NINTH CAUSE FOR DISCIPLINE**
23 **(Respondents Chang, Hwang, Garner and Thai -**
24 **Non-Conforming Compounded Drugs Lacking Quality and Strength)**

25 64. Respondents PIC Chang, Pharmacy Director Hwang, Owner Garner, and Owner Thai
26 are subject to disciplinary action under Section 4301, subdivision (o), for violating Section 4342,
27 subsection (a). The circumstances are that, on or about August 1, 2017, during an inspection by
28 the Board's Inspector at Partner Healthcare there were compounded drugs, 24 previously frozen
Cefazolin 1 gm IVPB in stock which were incorrectly labelled with an expiration date of September
30, 2017 (60 days) affixed, when the manufacturer of the product stated the Cefazolin 1 gm IVPB

1 was only good for 30 days once thawed, as set forth above in greater detail in Paragraphs 57-62,
2 which allegations are incorporated here fully by reference. The 24 thawed Cefazolin 1 gm IVPB
3 did not conform to the standard and tests as to quality and strength, provided in the latest edition of
4 the U.S. Pharmacopoeia or the National Formulary and/or there was a knowing or willful violation
5 of a regulation or regulations adopted pursuant to Section 4006.

6 65. Pursuant to Section 4113, subsection (c), Respondent Chang, as the PIC during the
7 relevant time period, is liable for his failure to adequately supervise his employees, and institute
8 and follow adequate policies and procedures to ensure that all compounded drugs, including the 24
9 thawed Cefazolin 1 gm IVPB, were properly labelled, and conformed in quality and strength to the
10 manufacturer's specifications and all applicable state and federal regulations.

11 66. Respondent Hwang, as the Pharmacy Director, and Respondents Garner and Thai, as
12 part owners/shareholders of the pharmacy during the relevant time period, are subject to
13 disciplinary action for their failure to adequately supervise their employees, and institute and follow
14 adequate policies and procedures to ensure that all compounded drugs, including the 24 thawed
15 Cefazolin 1 gm IVPB, were properly labelled, conformed in quality and strength to the
16 manufacturer's specifications and to all applicable state and federal regulations.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Respondent Partner Healthcare - Compounding Quality Assurance)**

19 67. Respondent Partner Healthcare's Sterile Compounding License and Pharmacy Permit
20 are subject to disciplinary action under Section 4301, subdivision (o), for violating California Code
21 of Regulations, title 16, section 1735.8, subsection (c), in conjunction with California Code of
22 Regulations, title 16, sections 1735.2, subsection (h) and 1735.6, subsection (a). The circumstances
23 are that, on or about August 1, 2017, during an inspection by the Board's Inspector at Partner
24 Healthcare and investigation, it was determined that Respondent did not ensure integrity, potency,
25 quality and labeled strength of compounded products at least once annually, between 8/7/15 and
26 7/20/17, as set forth above in greater detail in Paragraphs 57-62, which allegations are incorporated
27 here fully by reference.
28

ELEVENTH CAUSE FOR DISCIPLINE
**(Respondents Chang, Hwang, Garner and Thai –
Compounding Quality Assurance)**

1
2
3 68. Respondents PIC Chang, Pharmacy Director Hwang, Owner Garner and Owner Thai
4 are subject to disciplinary action under section 4301, subdivision (o), for violating California Code
5 of Regulations, title 16, section 1735.8, subsection (c), in conjunction with California Code of
6 Regulations, title 16, sections 1735.2, subsection (h) and 1735.6, subsection (a) and Section 4081,
7 subsection (b). The circumstances are that, on or about August 1, 2017, during an inspection by
8 the Board's Inspector at Partner Healthcare and investigation, it was determined that Respondent
9 did not ensure integrity, potency, quality and labeled strength of compounded products (24
10 previously frozen Cefazolin 1 gm IVPB) at least once annually, between 8/7/15 and 7/20/17, as set
11 forth above in greater detail in Paragraphs 57-62, which allegations are incorporated here fully by
12 reference.

13 69. Pursuant to Section 4113, Respondent Chang, as the PIC of the pharmacy during the
14 relevant time period, is liable for his failure and/or that of the pharmacy's employees to ensure
15 integrity, potency, quality and labeled strength of compounded products. The pharmacy's policies
16 and procedures shall be reviewed and such review shall be documented on an annual basis by the
17 PIC. Respondent Chang did not document he reviewed the pharmacy's policies and procedures
18 annually or how staff were notified of any changes to them.

19 70. Respondents Hwang, Garner and Thai, as part owners/shareholders of the pharmacy
20 during the relevant time period, are liable for their failure and/or that of the pharmacy's employees
21 to ensure integrity, potency, quality and labeled strength of compounded products.

DISCIPLINE CONSIDERATIONS

22
23 71. To determine the degree of discipline, Complainant alleges as follows:

24 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014
25 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the
26 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in
27 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the
28 citation. The citation was paid in full and became the final order.

- 1 5. Revoking or suspending Pharmacist Permit Number 53680, issued to Brian Garner;
- 2 6. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,
- 3 issued to Nestor Daniel Sanchez;
- 4 7. Ordering Partner Healthcare Inc., Henry Hung Yat Chang, Khanh-Long Thai, Ammie
- 5 Hwang, Brian Garner, and Nestor Sanchez, jointly and severally, to pay the Board of Pharmacy
- 6 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 7 Professions Code section 125.3; and,
- 8 8. Taking such other and further action as deemed necessary and proper.
- 9

11 DATED: April 13, 2018

Virginia E. Herold for

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

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7

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

<p>12 In the Matter of the Accusation Against:</p> <p>13 PARTNER HEALTHCARE, INC.; HENRY HUNG YAT CHANG 2035 S. Myrtle Ave. Monrovia, CA 91016</p> <p>14 Pharmacy Permit No. PHY 51078</p> <p>15 AND</p> <p>16 HENRY HUNG YAT CHANG 2035 S. Myrtle Ave. 17 Monrovia, CA 91016</p> <p>18 Pharmacist License No. RPH 53723</p> <p>19 AND</p> <p>20 NESTOR DANIEL SANCHEZ 13728 Olive St. 21 Baldwin Park, CA 91706</p> <p>22 Pharmacy Technician Registration No. TCH 123802</p> <p>23</p> <p>24 Respondent.</p>	<p>Case No. 6176</p> <p>A C C U S A T I O N</p>
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27
28

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about October 2, 2012, the Board issued Pharmacy Permit Number PHY 51078
6 to Partner Healthcare, Inc.; Henry Hung Yat Chang (Respondent). The Pharmacy Permit was in
7 full force and effect at all times relevant to the charges brought herein and will expire on October
8 1, 2017, unless renewed. Henry Hung Yat Chang has been the Pharmacist-In-Charge (PIC) of
9 Partner Healthcare, Inc. from October 2, 2012 to the present.

10 3. On or about August 22, 2002, the Board issued Pharmacist License Number RPH
11 53723 to Henry Hung Yat Chang (Respondent). The Pharmacist License was in full force and
12 effect at all times relevant to the charges brought herein and will expire on October 31, 2017,
13 unless renewed.

14 4. On or about May 24, 2012, the Board issued Pharmacy Technician Registration
15 Number TCH 123802 to Nestor Daniel Sanchez (Respondent). The Pharmacy Technician
16 Registration was in full force and effect at all times relevant to the charges brought herein and
17 will expire on December 31, 2017, unless renewed.

18 **JURISDICTION**

19 5. This Accusation is brought before the Board, under the authority of the following
20 laws. All section references are to the Business and Professions Code unless otherwise indicated.

21 6. Under Section 4300, the Board may discipline any license, for any reason provided in
22 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

23 7. Section 4300.1 states:

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

1 8. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
2 within three years following its expiration may not be renewed, restored, or reinstated and shall
3 be canceled by operation of law at the end of the three-year period. Under Section 4402,
4 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to
5 the expiration of the three-year period.

6 **STATUTORY PROVISIONS**

7 9. Section 490 states, in pertinent part:

8 (a) In addition to any other action that a board is permitted to take against a
9 licensee, a board may suspend or revoke a license on the ground that the licensee has
10 been convicted of a crime, if the crime is substantially related to the qualifications,
functions, or duties of the business or profession for which the license was issued.

11 (b) Notwithstanding any other provision of law, a board may exercise any
12 authority to discipline a licensee for conviction of a crime that is independent of the
13 authority granted under subdivision (a) only if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the
licensee's license was issued.

14 (c) A conviction within the meaning of this section means a plea or verdict of
15 guilty or a conviction following a plea of nolo contendere. An action that a board is
16 permitted to take following the establishment of a conviction may be taken when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on
appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

17 (d) The Legislature hereby finds and declares that the application of this section
18 has been made unclear by the holding in Petropoulos v. Department of Real Estate
19 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
number of statutes and regulations in question, resulting in potential harm to the
20 consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
21 independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

22 10. Section 4022 states, in pertinent part:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe
24 for self-use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar
28 import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully
2 dispensed only on prescription or furnished pursuant to Section 4006.

3 11. Section 4036.5 states that “‘Pharmacist-in-charge’ means a pharmacist proposed by a
4 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
5 pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice
6 of pharmacy.”

7 12. Section 4059, subdivision (a), in pertinent part, prohibits furnishing of any dangerous
8 drug or dangerous device except upon the prescription of an authorized prescriber.

9 13. Section 4060 states, in pertinent part:

10 No person shall possess any controlled substance, except that furnished to a
11 person upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor . . . This section shall not apply to the possession
13 of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
14 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
15 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
16 correctly labeled with the name and address of the supplier or producer.

17 14. Section 4105 of the Code states, in pertinent part, that “(a) All records or other
18 documentation of the acquisition and disposition of dangerous drugs and dangerous devices by
19 any entity licensed by the board shall be retained on the licensed premises in a readily retrievable
20 form.”

21 15. Section 4113 states, in pertinent part, that: “(c) The pharmacist-in-charge shall be
22 responsible for a pharmacy’s compliance with all state and federal laws and regulations
23 pertaining to the practice of pharmacy.”

24 16. Section 4301 of the Code states, in pertinent part:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
27 to, any of the following:

28 * * * *

(f) The commission of any act involving moral turpitude, dishonesty, fraud,
deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

1 * * * *

2 (1) The conviction of a crime substantially related to the qualifications,
3 functions, and duties of a licensee under this chapter. The record of conviction of
4 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
5 States Code regulating controlled substances or of a violation of the statutes of this
6 state regulating controlled substances or dangerous drugs shall be conclusive
7 evidence of unprofessional conduct. In all other cases, the record of conviction
8 shall be conclusive evidence only of the fact that the conviction occurred. The
9 board may inquire into the circumstances surrounding the commission of the
10 crime, in order to fix the degree of discipline or, in the case of a conviction not
11 involving controlled substances or dangerous drugs, to determine if the conviction
12 is of an offense substantially related to the qualifications, functions, and duties of a
13 licensee under this chapter. A plea or verdict of guilty or a conviction following a
14 plea of nolo contendere is deemed to be a conviction within the meaning of this
15 provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting
17 probation is made suspending the imposition of sentence, irrespective of a
18 subsequent order under Section 1203.4 of the Penal Code allowing the person to
19 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
20 the verdict of guilty, or dismissing the accusation, information, or indictment.

21 * * * *

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

27 17. Health and Safety Code section 11158, subdivision (a), states:

28 Except as provided in Section 11159 or in subdivision (b) of this section, no
controlled substance classified in Schedule II shall be dispensed without a
prescription meeting the requirements of this chapter. Except as provided in
Section 11159 or when dispensed directly to an ultimate user by a practitioner,
other than a pharmacist or pharmacy, no controlled substance classified in
Schedule III, IV, or V may be dispensed without a prescription meeting the
requirements of this chapter.

18. Health and Safety Code section 11171 provides that no person shall prescribe,
administer, or furnish a controlled substance except under the conditions and in the manner
provided by this division.

REGULATORY PROVISIONS

19. California Code of Regulations, title 16, section 1709.1 provides that: "(a) The
pharmacist-in-charge of a pharmacy shall be employed at that location and shall have
responsibility for the daily operation of the pharmacy."

///

///

1 20. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d)
2 provides that:

3 * * * *

4 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
5 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
6 secured and distributed. The pharmacy shall be of sufficient size and unobstructed area
7 to accommodate the safe practice of pharmacy.

8 * * * *

9 (d) Each pharmacist while on duty shall be responsible for the security of the
10 prescription department, including provisions for effective control against theft or
11 diversion of dangerous drugs and devices, and records for such drugs and devices.
12 Possession of a key to the pharmacy where dangerous drugs and controlled
13 substances are stored shall be restricted to a pharmacist.

14 21. California Code of Regulations, title 16, section 1718, provides that:

15 “Current Inventory” as used in Sections 4081 and 4332 of the Business and
16 Professions Code shall be considered to include complete accountability for all
17 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

18 The controlled substances inventories required by Title 21, CFR, Section 1304
19 shall be available for inspection upon request for at least 3 years after the date of the
20 inventory.

21 22. California Code of Regulations, title 16, section 1770, states, in pertinent part:

22 For the purpose of denial, suspension, or revocation of a personal or facility
23 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
24 Professions Code, a crime or act shall be considered substantially related to the
25 qualifications, functions or duties of a licensee or registrant if to a substantial degree
26 it evidences present or potential unfitness of a licensee or registrant to perform the
27 functions authorized by his license or registration in a manner consistent with the
28 public health, safety, or welfare.

COST RECOVERY

29 23. Section 125.3 provides, in pertinent part, that the Board may request the
30 administrative law judge to direct a licentiate found to have committed a violation of the licensing
31 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

32 24. “Alprazolam” (brand name – “Zanax”) is a depressant and a Schedule IV controlled
33 substance, as designated by Health & Safety Code section 11057, subdivision (d)(1). It is
34 categorized as a dangerous drug pursuant to Section 4022.

1 25. “**Promethazine with Codeine**” (brand name – “**Phenergan-Codeine**”) is a
2 dangerous drug, and a Schedule V controlled substance, as designated by Health & Safety Code
3 section 11058, subdivision (c)(1). Promethazine with Codeine is a prescription cough syrup.

4 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

5 26. On or about January 4, 2016, the Board received from Respondent Chang, who was,
6 at all times relevant to this Accusation, and is, the PIC of Partner Healthcare, his written
7 statement with a copy of a Report of Theft or Loss of Controlled Substances (DEA 106). The
8 DEA 106 report showed a loss/theft of 17,028 ml of Promethazine with Codeine syrup and
9 15,000 tablets of Alprazolam 2 mg. Respondent Chang stated the evidence “points to employee
10 pilferage”, but there was no concrete evidence to prove that. In addition, the DEA 106 report and
11 Chang’s written statement indicate additional security measures were instituted by the pharmacy
12 to prevent future loss/theft, including: (1) installing additional video surveillance cameras;
13 (2) implementing new controlled substance dispensing policies and procedures; (3) locking up all
14 controlled substances; and (4) installing new lock(s) on narcotic cabinet(s).

15 27. From February 8, 2016 to February 9, 2016, an analyst with the Board’s Complaint
16 Unit - CURES (Controlled Substance Utilization, Review and Evaluation System) communicated
17 by email with Respondent Chang and another pharmacist employed with Partner Healthcare,
18 A.H., for the purpose of conducting an audit and records supporting the audit.

19 28. On February 8, 2016, the Board received an audit spreadsheet and supporting
20 records, including a statement from Pharmacist A.H. dated February 6, 2016, with the following
21 information:

22 • On 12/07/15, a pharmacy staff member reported a missing Alprazolam 2 mg container
23 (500 tablets/container.)

24 • Reviewing a year of acquisition and disposition records revealed Promethazine with
25 Codeine and Alprazolam 2 mg showed discrepancies.

26 • An audit period was set by a last controlled substance inventory conducted on July 2,
27 2014 and an inventory conducted on December 10, 2015.

28

1 • There was an ongoing investigation with a detective at the Monrovia Police Department in
2 order to identify suspects who stole the Promethazine with Codeine and Alprazolam 2 mg.

3 29. The audit records revealed the following information:

4 • The audit for Promethazine with Codeine showed a discrepancy of 839,440 ml (about
5 1,775 bottles), based on records from July 2, 2014 to December 10, 2015.

6 • The audit for Alprazolam 2 mg showed a discrepancy of 76,263 tablets, based on records
7 from July 2, 2014 to December 10, 2015.

8 • A beginning inventory was conducted on July 1, 2014 and an ending inventory was
9 conducted on December 10, 2015.

10 • Purchasing records and a dispensing history for Alprazolam 2 mg were included.

11 • Purchasing records and a dispensing history for Promethazine with Codeine were
12 included.

13 • The submitted supporting audit records were reconciled with the spreadsheet and the drug
14 discrepancies.

15 30. From March 31, 2016 to April 12, 2016, Complaint Unit Analyst T.R. and
16 Pharmacist A.H. communicated via email about an employee's theft of drugs from Partner
17 Healthcare. The suspect, former Pharmacy Technician Nestor Sanchez, was identified by the
18 Monrovia Police Department and a criminal case was brought against him.

19 31. On June 14, 2016, a Board Inspector inspected Partner Healthcare, which is a closed
20 door, 24-hour pharmacy servicing skilled nursing facilities, board and care facilities and hospices,
21 in the presence of Respondent Chang and Pharmacist A.H. No additional information related to
22 the drug losses was found by the Board's Inspector, who completed the inspection and issued an
23 Inspection Report.

24 32. The Board obtained police reports and court documents related to the criminal case
25 brought against Respondent Sanchez for his theft of medications from Partner Healthcare, which
26 indicated the following:

27 33. On or about January 27, 2016, a law enforcement officer from the Monrovia Police
28 Department met with Pharmacist A.H., who reported that she discovered a large quantity of

1 medication was missing from Partner Healthcare's drug supply inventory, on November 20, 2014.
2 At that time, A.H. suspected that a Pharmacy Technician, O.B., may have stolen the medications,
3 because he abruptly resigned without providing two-weeks' notice, around the time the pharmacy
4 was auditing its inventory.

5 34. On February 2, 2016, a law enforcement officer from the Monrovia Police
6 Department met with A.H., who told him that she recalled, in November, 2015, an on-duty
7 pharmacist had informed her that two bottles (500 pills per bottle) of Xanax were missing from
8 the inventory. A.H. began monitoring her employees and auditing the pharmacy's inventory on a
9 weekly basis. Her audits between November 2014 and November 2015 indicated that
10 approximately \$13,278.00 of Codeine cough syrup and Xanax pills were missing from the
11 pharmacy's inventory. A.H. noticed an unusual trend in purchases, in that only one or two items
12 were ordered per purchase form during the graveyard shift, whereas the standard practice for
13 pharmacy purchases was for the on-duty purchaser to open one purchase order at the beginning of
14 the shift and add items to the same purchase order throughout the shift.

15 35. Furthermore, A.H. was informed by employees that an employee (Nestor Sanchez)
16 was bragging about paying \$1,000 for a hotel room in Las Vegas. A.H. also observed that
17 Respondent Sanchez had been coming into work late, working fewer hours each week and
18 leaving work early. Around December 2015, A.H. terminated Sanchez' employment with Partner
19 Healthcare due to his attendance issues. Moreover, A.H. suspected that Sanchez was responsible
20 for the missing Codeine cough syrup and Xanax pills. At that time, A.H. suspected Sanchez may
21 have had assistance from other employees to steal the drugs from Partner Healthcare. However,
22 three employees of Partner Healthcare gave statements to the police and they were ruled out as
23 suspects.

24 36. On or about February 10, 2016, a law enforcement officer with the Monrovia Police
25 Department interviewed Respondent Sanchez, who told him he had worked at Partner Healthcare
26 from April 2014 through November 2015. When Partner Healthcare moved to Monrovia in 2015,
27 Sanchez admitted he began stealing two to three bottles of Codeine cough syrup and selling them
28 to his friends, for around \$500 per sale. He then stole bottles of Xanax and also sold them to his

1 friends. Sanchez stopped stealing in mid-October 2015 because he believed his employer became
2 aware of the shortage in the narcotics inventory. Sanchez told the officer he knew he made bad
3 choices and felt embarrassed. He stole because he was in need of money and acted alone.
4 Sanchez provided the officer with his statement in writing and wrote an apology letter to Partner
5 Healthcare. Based upon the officer's investigation and Sanchez' confession, he believed that
6 Sanchez committed grand theft of medications while employed by Partner Healthcare, for a six-
7 month period of time from April 2015 through October 2015, and the case was referred for
8 criminal prosecution of Sanchez for his crime.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Respondent Partner Healthcare - Failure to Maintain
Effective Control and Security of Dangerous Drugs)**

11 37. Respondent Partner Healthcare is subject to disciplinary action under Section 4301,
12 subdivisions (o) and/or (j), in that Respondent violated California Code of Regulations, title 16,
13 section 1714, subdivision (b), by failing to provide effective control and security against the
14 loss/theft of Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous drugs and
15 controlled substances, by Respondent Sanchez, from approximately April 2015 through October
16 2015, as set forth above in Paragraphs 24-36, which are incorporated by reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Respondent Chang – Operational Standards and Security)**

19 38. Respondent Chang is subject to disciplinary action under Section 4301, subdivisions
20 (o) and (j) in that, while employed as the PIC of Partner Healthcare, Respondent Chang violated
21 Sections 4113, subdivision (c) and 1709.1, subdivision (a), and California Code of Regulations,
22 title 16, section 1714, subdivision (d), by failing to provide effective control and security against
23 the loss or diversion of Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous
24 drugs/controlled substances, from the pharmacy. During an approximate six-month period
25 between April 2015 and October 2015, Respondent Sanchez stole the controlled substances from
26 his employer, Partner Healthcare Center, as set forth above in Paragraphs 24-36, incorporated
27 herein by reference.
28

1 **THIRD CAUSE FOR DISCIPLINE**
2 **(Respondent Chang –Failure to Maintain**
3 **and/or Produce Adequate Drug Inventory Records)**

4 39. Respondent Chang is subject to disciplinary action under Sections 4301, subdivisions
5 (o) and/or (j) and 4113, subdivision (c), as defined by California Code of Regulations, title 16,
6 section 1718, in that, while employed as the PIC of Partner Healthcare, Respondent Chang failed
7 to maintain current drug inventory records for Partner Healthcare and/or produce them to the
8 Board, for Promethazine with Codeine cough syrup and Alprazolam 2 mg, dangerous
9 drugs/controlled substances, which were stolen by Respondent Sanchez from the pharmacy
10 between approximately April 2015 and October 2015, as set forth above in Paragraphs 24-36,
11 incorporated herein by reference.

12 **FOURTH CAUSE FOR DISCIPLINE**
13 **(Respondent Sanchez - Conviction of a**
14 **Substantially Related Crime)**

15 40. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
16 (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that
17 Respondent has been convicted of a crime substantially related to the qualifications, functions or
18 duties of a pharmacy technician. On or about July 25, 2016, after pleading nolo contendere,
19 Respondent was convicted of one felony count of violating Penal Code section 487, subdivision
20 (a) [grand theft of personal property] in the criminal proceeding entitled *The People of the State*
21 *of California v. Nestor Daniel Sanchez* (Super. Ct. Los Angeles County, Pasadena Courthouse,
22 2016, No. GA098561). The Court sentenced Respondent to serve 365 days in the Los Angeles
23 County Jail, placed him on five years' formal probation, and ordered him to pay restitution to the
24 victim, among other terms and conditions. The circumstances surrounding the conviction are set
25 forth above, in Paragraphs 24-36, and are incorporated herein by reference.

26 **FIFTH CAUSE FOR DISCIPLINE**
27 **(Respondent Sanchez - Acts Involving**
28 **Dishonesty, Fraud, or Deceit)**

 41. Respondent Sanchez is subject to disciplinary action under Section 4301, subdivision
(f), in that he committed acts involving dishonesty, fraud, or deceit with the intent to substantially

1 benefit himself, or substantially injure another, when he stole Promethazine with Codeine syrup
2 and Alprazolam 2 mg between approximately April 2015 and October 2015 from his employer, as
3 alleged above in Paragraphs 24-36, which are incorporated herein by reference.

4 **SIXTH CAUSE FOR DISCIPLINE**
5 **(Respondent Sanchez - Illegal Possession of Prescription**
6 **Drugs Without a Valid Prescription)**

7 42. Respondent Sanchez is subject to disciplinary action under Section 4301,
8 subdivisions (j) and (o), for violating Section 4060 and Health and Safety Code sections 11158,
9 subdivision (a), and 11171, in that, between approximately April 2015 and October 2015,
10 Respondent was in possession of prescription drugs without a valid prescription. Complainant
11 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 24-36.

12 **SEVENTH CAUSE FOR DISCIPLINE**
13 **(Respondent Sanchez – Furnishing Prescription Drugs**
14 **To Others Without a Valid Prescription)**

15 43. Respondent Sanchez is subject to disciplinary action under Section 4301,
16 subdivisions (j) and/or (o), for violating Section 4059, subdivisions (a), in that, between
17 approximately April 2015 and October 2015, he illegally sold and/or transferred stolen
18 prescription drugs to his friends, without a valid prescription. Complainant refers to, and by this
19 reference incorporates, the allegations set forth above in Paragraphs 24-36.

20 **DISCIPLINE CONSIDERATIONS**

21 44. To determine the degree of discipline, Complainant alleges as follows:

22 a. On or about February 24, 2016, the Board issued administrative Citation No. CI 2014
23 63965 against Respondent Partner Healthcare for failing to ensure that it did not exceed the
24 pharmacist to pharmacy technician ratio of 2:1 between June 14, 2015 and June 20, 2015, in
25 violation of Section 4115, subdivision (f)(1). A fine in the amount of \$5,000 was issued with the
26 citation. The citation was paid in full and became the final order.

27 b. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
28 65972 against Respondent Partner Healthcare for failing to prevent the sale of drugs lacking in
quality and for taking back medications from assisted living facilities and placing them into
containers to be dispensed to other patients, in violation of Section 4342, subdivision (a) and

1 Health and Safety Code section 111440. A fine in the amount of \$2,000 was issued with the
2 citation. The citation was paid in full and became the final order.

3 c. On or about February 24, 2016, the Board issued administrative Citation No. CI 2015
4 69197 against Respondent Henry Hung Yat Chang for failing to ensure that he, as PIC for Partner
5 Healthcare, did not exceed the pharmacist to pharmacy technician ratio of 2:1 between June 14,
6 2015 and June 20, 2015, in violation of Section 4115, subdivision (f)(1). A fine in the amount of
7 \$5,000 was issued with the citation. The citation was paid in full and became the final order.

8 d. On or about June 2, 2016, the Board issued administrative Citation No. CI 2014
9 65972 against Respondent Henry Hung Yat Chang for failing to prevent the sale of drugs lacking
10 in quality and for taking back medications from assisted living facilities and placing them into
11 containers to be dispensed to other patients, while he was PIC for Partner Healthcare, in violation
12 of Section 4342, subdivision (a) and Health and Safety Code section 111440. A fine in the
13 amount of \$2,000 was issued with the citation. The citation was paid in full and became the final
14 order.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Permit Number PHY 51078, issued to Partner
19 Healthcare, Inc.; Henry Hung Yat Chang;
- 20 2. Revoking or suspending Pharmacist Permit Number, issued to Henry Hung Yat
21 Chang;
- 22 3. Revoking or suspending Pharmacy Technician Registration Number TCH 123802,
23 issued to Nestor Daniel Sanchez;
- 24 4. Ordering Henry Hung Yat Chang and Nestor Sanchez, jointly and severally, to pay
25 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
26 pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/29/17



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

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