

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

In the Matter of the Accusation Against:

Case No. 3156

GAROS PHARMACY;
1646 E. Washington Blvd.
Pasadena, CA 91104
Pharmacy Permit No. PHY 47485

and

MADLEN BASILYAN
400 W. California Ave. #209
Glendale, CA 91203
Pharmacist License No. RPH 56808

Respondent.

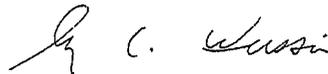
DECISION AND ORDER

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

This decision shall become effective on January 7, 2011.

It is so ORDERED December 8, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
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Attorneys for Complainant

7
8 **BEFORE THE**
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3156

11 **GAROS PHARMACY**
12 **1646 E. Washington Blvd.**
Pasadena, CA 91104
13 **Pharmacy Permit No. PHY 47485,**
14 **MADLEN BASILYAN,**
Pharmacist-In-Charge

OAH No. L-2009120127

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 and

16 **MADLEN BASILYAN**
17 **400 W. California Ave. #209**
Glendale, CA 91203
18 **Pharmacist License No. RPH 56808**

19 Respondents.

20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Edmund
26 G. Brown Jr., Attorney General of the State of California, by Alvaro Mejia, Deputy Attorney
27 General.

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1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and
4 every right set forth above.

5 CULPABILITY

6 9. Respondents admit the truth of each and every charge and allegation in Accusation
7 No. 3156.

8 10. Respondent Basilyan agrees that her Pharmacist License is subject to discipline and
9 she agrees to be bound by the Board of Pharmacy's imposition of discipline as set forth in the
10 Disciplinary Order below.

11 11. Respondents agree that their Pharmacy Permit is subject to discipline and they agree
12 to be bound by the Board of Pharmacy's imposition of discipline as set forth in the Disciplinary
13 Order below.

14 CONTINGENCY

15 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
16 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
17 communicate directly with the Board regarding this stipulation and settlement, without notice to
18 or participation by Respondents. By signing the stipulation, Respondents understand and agree
19 that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the
20 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
21 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
22 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
23 not be disqualified from further action by having considered this matter.

24 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
25 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
26 effect as the originals.

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1 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
2 for any drug, device or controlled substance.

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

4 **2. Report to the Board**

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

14 **3. Interview with the Board**

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

20 **4. Cooperate with Board Staff**

21 Respondents shall cooperate with the Board's inspection program and with the Board's
22 monitoring and investigation of respondent's compliance with the terms and conditions of their
23 probation. Failure to cooperate shall be considered a violation of probation.

24 **5. Continuing Education**

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

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1 6. **Notice to Employers**

2 During the period of probation, Respondent Basilyan shall notify all present and
3 prospective employers of the Decision in Accusation Case No. 3156 and the terms, conditions
4 and restrictions imposed on respondent by the Decision, as follows:

5 Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of
6 Respondent Basilyan undertaking any new employment, Respondent shall cause her direct
7 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
8 respondent's tenure of employment) and owner to report to the Board in writing acknowledging
9 that the listed individual(s) has/have read the Decision in Accusation Case No. 3156, and terms
10 and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her
11 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 If Respondent Basilyan works for or is employed by or through a pharmacy employment
13 service, Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every
14 entity licensed by the Board of the terms and conditions of the Decision in Accusation Case No.
15 3156 in advance of the respondent commencing work at each licensed entity. A record of this
16 notification must be provided to the Board upon request.

17 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
18 (15) days of Respondent undertaking any new employment by or through a pharmacy
19 employment service, Respondent shall cause her direct supervisor with the pharmacy
20 employment service to report to the Board in writing acknowledging that they have read the
21 Decision in Accusation Case No. 3156 and the terms and conditions imposed thereby. It shall be
22 Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
23 acknowledgment(s) to the Board.

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

27 "Employment" within the meaning of this provision shall include any full-time, part-time,
28 temporary, relief or pharmacy management service as a pharmacist or any position for which a

1 pharmacist license is a requirement or criterion for employment, whether the respondent is an
2 employee, independent contractor or volunteer.

3 **7. Notice to Employees**

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

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

18 **8. Owners and Officers: Knowledge of the Law**

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

25 **9. Posted Notice of Probation**

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

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

5 Failure to post such notice shall be considered a violation of probation.

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

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

12 **11. Reimbursement of Board Costs**

13 As a condition precedent to successful completion of probation, Respondent Garos
14 Pharmacy and Respondent Basilyan shall, jointly and severally, pay to the Board its costs of
15 investigation and prosecution in the amount of \$30,000.00. Respondents shall be permitted to
16 pay these costs in a payment plan approved by the Board or its designee. Full payment shall be
17 completed at least six (6) months before the probationary period is scheduled to end. Failure to
18 pay such costs by the deadline(s) as directed shall be considered a violation of probation.

19 The filing of bankruptcy by Respondents shall not relieve Respondents of their
20 responsibility to reimburse the Board its costs of investigation and prosecution.

21 **12. Probation Monitoring Costs**

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

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1 **13. Status of License**

2 Respondents shall, at all times while on probation, maintain an active, current license with
3 the Board, including any period during which suspension or probation is tolled. Failure to
4 maintain an active, current license shall be considered a violation of probation.

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

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

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

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

24 **15. Premises License Surrender While on Probation/Suspension**

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

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

7 Respondent owner shall also, by the effective date of this Decision, arrange for the continuation
8 of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to
9 ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one
10 or more area pharmacies capable of taking up the patients' care, and by cooperating as may be
11 necessary in the transfer of records or prescriptions for ongoing patients. Within five (5) days of
12 its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the
13 written notice to the Board. For the purposes of this provision, "ongoing patients" means those
14 patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or
15 for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

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

19 Respondent owner further stipulates that she shall reimburse the Board for its costs of
20 investigation and prosecution prior to the acceptance of the surrender.

21 **16. Notification of a Change in Name, Residence Address, Mailing Address or**
22 **Employment**

23 Respondents shall notify the Board in writing within ten (10) days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondents
26 shall further notify the Board in writing within ten (10) days of a change in name, residence
27 address, mailing address, or phone number.

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

3 **17. Tolling of Probation**

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

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

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

18 "Cessation of practice" means any calendar month during which respondent is not
19 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions
20 Code section 4000 et seq. "Resumption of practice" means any calendar month during
21 which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as
22 defined by Business and Professions Code section 4000 et seq.

23 **18. Violation of Probation**

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

1 If Respondents violate probation in any respect, the Board, after giving Respondents notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
4 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
5 a petition to revoke probation or an accusation is filed against Respondents during probation, the
6 Board shall have continuing jurisdiction and the period of probation shall be automatically
7 extended until the petition to revoke probation or accusation is heard and decided.

8 **19. Completion of Probation**

9 Upon written notice by the Board or its designee indicating successful completion of
10 probation, Respondent Basilyan's license and Respondent Garos Pharmacy's permit will be fully
11 restored.

12 **20. Suspension**

13 As part of probation, Respondent Basilyan is actually suspended from the practice of
14 pharmacy for 15 days beginning the effective date of this Decision.

15 During suspension, Respondent Basilyan shall not enter any pharmacy area or any portion
16 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
17 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
18 drugs and devices or controlled substances are maintained. Respondent Basilyan shall not
19 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
20 compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be
21 a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing
22 or dispensing of dangerous drugs and devices or controlled substances.

23 Respondent Basilyan shall not engage in any activity that requires the professional
24 judgment of a pharmacist. Respondent Basilyan shall not direct or control any aspect of the
25 practice of pharmacy. Respondent Basilyan shall not perform the duties of a pharmacy technician
26 or a designated representative for any entity licensed by the Board.

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1 Subject to the above restrictions, Respondent Basilyan may continue to own or hold an
2 interest in any licensed premises in which she holds an interest at the time this Decision becomes
3 effective unless otherwise specified in this order.

4 Failure to comply with this suspension shall be considered a violation of probation.

5 **21. No Additional Ownership of a Board-approved Premises**

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

15 **22. Report of Controlled Substances**

16 Respondent Garos Pharmacy and Respondent Basilyan shall submit monthly reports to the
17 Board detailing the total acquisition and disposition of such controlled substances as the Board
18 may direct. Respondent Garos Pharmacy and Respondent Basilyan shall specify the manner of
19 disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer,
20 from another retailer, etc.) of such controlled substances. Respondent Garos Pharmacy and
21 Respondent Basilyan shall report on a monthly basis or as directed by the Board. The report shall
22 be delivered or mailed to the Board no later than ten (10) days following the end of the reporting
23 period. Failure to timely prepare or submit such reports shall be considered a violation of
24 probation.

25 **23. Consultant for Owner or Pharmacist-In-Charge**

26 During the period of probation, Respondent Basilyan shall not supervise any intern
27 pharmacist or serve as a consultant to any entity licensed by the Board. Respondent Basilyan
28 may be a pharmacist-in-charge. However, if during the period of probation Respondent Basilyan

1 serves as a pharmacist-in-charge, Respondent Basilyan shall retain an independent consultant at
2 her own expense who shall be responsible for reviewing pharmacy operations on a monthly basis
3 for compliance by Respondent Basilyan with state and federal laws and regulations governing the
4 practice of pharmacy and for compliance by Respondent Basilyan with the obligations of a
5 pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with
6 the Board and whose name shall be submitted to the Board or its designee, for prior approval,
7 within thirty (30) days of the effective date of this Decision. Respondent shall not be a
8 pharmacist-in-charge at more than one pharmacy or at any pharmacy of which they is not the sole
9 owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant
10 shall be considered a violation of probation.

11 24. Tolling of Suspension

12 During the period of suspension, Respondent Basilyan shall not leave California for any
13 period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in
14 excess of the (10) days during suspension shall be considered a violation of probation. Moreover,
15 any absence from California during the period of suspension exceeding ten (10) days shall toll the
16 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
17 Respondent Basilyan is absent from California. During any such period of tolling of suspension,
18 Respondent Basilyan must nonetheless comply with all terms and conditions of probation.

19 Respondent Basilyan must notify the Board in writing within ten (10) days of departure,
20 and must further notify the Board in writing within ten (10) days of return. The failure to provide
21 such notification(s) shall constitute a violation of probation. Upon such departure and return,
22 Respondent Basilyan shall not resume the practice of pharmacy until notified by the Board that
23 the period of suspension has been satisfactorily completed.

24 25. Ethics Course

25 Within the first two (2) years of the effective date of this Decision, Respondent Basilyan
26 shall enroll in and complete a course in ethics, at Respondent's expense, approved in advance by
27 the Board or its designee. Failure to initiate the course during the first year of probation, and
28 complete it within the second year of probation, is a violation of probation.

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

3 **26. Community Pharmacy Self-Assessment**

4 Respondent Garos Basilyan shall, during the period of probation, complete and submit the
5 Board approved Community Pharmacy Self-Assessment form on a quarterly basis or as the Board
6 may direct. The Community Pharmacy Self-Assessment form shall be delivered or mailed to the
7 Board no later than ten (10) days following the end of the reporting period. Failure to timely
8 prepare or submit such forms shall be considered a violation of probation.

9 **ACCEPTANCE**

10 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
11 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
12 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
13 bound by the Decision and Order of the Board of Pharmacy.

14
15 DATED: 8/4/10

MADLEN BASILYAN
Respondent

17 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
18 stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated
19 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
20 bound by the Decision and Order of the Board of Pharmacy.

21
22 DATED: 8/4/10

GAROS PHARMACY; MADLEN BASILYAN,
PHARMACIST-IN-CHARGE
Respondent

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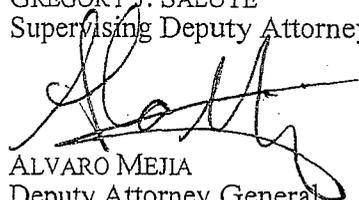
ENDORSEMENT

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

Dated: October 7, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



ALVARO MEJIA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation Case No. 3156

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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5 Telephone: (213) 897-0083
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6 Attorneys for Complainant

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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. 3156

12 GAROS PHARMACY
1646 E. Washington Blvd.
13 Pasadena, CA 91104
MADLEN BASILYAN, Pharmacist-In-Charge
14 Pharmacy Permit No. PHY 47485,
15
and
16
MADLEN BASILYAN
17 400 W. California Ave. #209
Glendale, CA 91203
18 Pharmacist License No. RPH 56808

A C C U S A T I O N

19 Respondents.

20
21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 25 2. On or about June 14, 2006, the Board of Pharmacy issued Pharmacy
26 Permit Number PHY 47485 to Garos Pharmacy; with Madlen Basilyan as Pharmacist-In-Charge
27 (Respondent Garos Pharmacy). The Pharmacy Permit was in full force and effect at all times
28 relevant to the charges brought herein and will expire on June 1, 2009, unless renewed.

1 directions for use.

2 (C) The date of issue.

3 (D) Either rubber stamped, typed, or printed by hand or typeset, the name,
4 address, and telephone number of the prescriber, his or her license classification, and his or her
5 federal registry number, if a controlled substance is prescribed.”

6
7 10. Section 4063 of the Code states:

8 “No prescription for any dangerous drug or dangerous device may be refilled
9 except upon authorization of the prescriber. The authorization may be given orally or at the time
10 of giving the original prescription. No prescription for any dangerous drug that is a controlled
11 substance may be designated refillable as needed.”

12 11. Section 4076, subdivision (a) of the Code states, in pertinent part,
13 “A pharmacist shall not dispense any prescription except in a container that meets the
14 requirements of state and federal law and is correctly labeled”

15 12. Section 4081, subdivision (a) of the Code states:

16 “(a) All records of manufacture and of sale, acquisition, or disposition of
17 dangerous drugs or dangerous devices shall be at all times during business hours open to
18 inspection by authorized officers of the law, and shall be preserved for at least three years from
19 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
20 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
21 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
22 certificate, license, permit, registration, or exemption under Division 2 (commencing with
23 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)
24 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
25 dangerous devices.

26 13. Section 4105 of the Code states, in pertinent part:

27 “(a) All records or other documentation of the acquisition and disposition of
28 dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on

1 the licensed premises in a readily retrievable form.

2 “(b) The licensee may remove the original records or documentation from the
3 licensed premises on a temporary basis for license-related purposes. However, a duplicate set of
4 those records or other documentation shall be retained on the licensed premises.

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

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

9 “(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
10 thereof, shall notify the board in writing of the identity and license number of that pharmacist and
11 the date he or she was designated.

12 “(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
13 with all state and federal laws and regulations pertaining to the practice of pharmacy.”

14
15 15. Section 4301 of the Code states:

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

20
21 “(d) The clearly excessive furnishing of controlled substances in violation of
22 subdivision (a) of Section 11153 of the Health and Safety Code.

23 “(e) The clearly excessive furnishing of controlled substances in violation of
24 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in
25 determining whether the furnishing of controlled substances is clearly excessive shall include,
26 but not be limited to, the amount of controlled substances furnished, the previous ordering
27 pattern of the customer (including size and frequency of orders), the type and size of the
28 customer, and where and to whom the customer distributes its product.

1
2 "(j) The violation of any of the statutes of this state, or any other state, or of the
3 United States regulating controlled substances and dangerous drugs.

4
5 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
7 applicable federal and state laws and regulations governing pharmacy, including regulations
8 established by the board or by any other state or federal regulatory agency."

9
10 16. Section 4302 of the Code states:
11 "The board may deny, suspend, or revoke any license of a corporation where
12 conditions exist in relation to any person holding 10 percent or more of the corporate stock of the
13 corporation, or where conditions exist in relation to any officer or director of the corporation that
14 would constitute grounds for disciplinary action against a licensee."

15 17. Section 4306.5 of the Code states:
16 "Unprofessional conduct for a pharmacist may include any of the following:
17 "(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise
18 of his or her education, training, or experience as a pharmacist, whether or not the act or
19 omission arises in the course of the practice of pharmacy or the ownership, management,
20 administration, or operation of a pharmacy or other entity licensed by the board.

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

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

28 "(d) Acts or omissions that involve, in whole or in part, the failure to fully

1 maintain and retain appropriate patient-specific information pertaining to the performance of any
2 pharmacy function.”

3 18. Section 4332 of the Code states:

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

8 19. Health and Safety Code section 11153, subdivision (a) states:

9 “(a) A prescription for a controlled substance shall only be issued for a legitimate
10 medical purpose by an individual practitioner acting in the usual course of his or her professional
11 practice. The responsibility for the proper prescribing and dispensing of controlled substances is
12 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
13 who fills the prescription. Except as authorized by this division, the following are not legal
14 prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
15 of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
16 habitual user of controlled substances, which is issued not in the course of professional treatment
17 or as part of an authorized narcotic treatment program, for the purpose of providing the user with
18 controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

19 20. Health and Safety Code section 11164, in pertinent part states:

20 “Except as provided in Section 11167, no person shall prescribe a controlled
21 substance, nor shall any person fill, compound, or dispense a prescription for a controlled
22 substance, unless it complies with the requirements of this section.

23 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV,
24 or V, except as authorized by subdivision (b), shall be made on a controlled substance
25 prescription form as specified in Section 11162.1 and shall meet the following requirements:

26 “(1) The prescription shall be signed and dated by the prescriber in ink and shall
27 contain the prescriber's address and telephone number; the name of the ultimate user or research
28 subject, or contact information as determined by the Secretary of the United States Department of

1 Health and Human Services; refill information, such as the number of refills ordered and whether
2 the prescription is a first-time request or a refill; and the name, quantity, strength, and directions
3 for use of the controlled substance prescribed.

4 “(2) The prescription shall also contain the address of the person for whom the
5 controlled substance is prescribed. If the prescriber does not specify this address on the
6 prescription, the pharmacist filling the prescription or an employee acting under the direction of
7 the pharmacist shall write or type the address on the prescription or maintain this information in a
8 readily retrievable form in the pharmacy.

9 “(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any
10 controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or
11 electronically transmitted prescription, which shall be produced in hard copy form and signed
12 and dated by the pharmacist filling the prescription or by any other person expressly authorized
13 by provisions of the Business and Professions Code. Any person who transmits, maintains, or
14 receives any electronically transmitted prescription shall ensure the security, integrity, authority,
15 and confidentiality of the prescription.”

16
17 21. Health and Safety Code section 11179 states:

18 “A person who fills a prescription shall keep it on file for at least three years from
19 the date of filling it.”

20 22. Health and Safety Code section 11206 states:

21 “Filed prescriptions shall constitute a transaction record that, together with
22 information that is readily retrievable in the pharmacy pursuant to Section 11164 shall show or
23 include the following:

24 “(a) The name(s) and address of the patient(s).

25 “(b) The date.

26 “(c) The character, including the name and strength, quantity, and directions for
27 use of the controlled substance involved.

28 “(d) The name, address, telephone number, category of professional licensure, and

1 the federal controlled substance registration number of the prescriber.”

2 23. California Code of Regulations, title 16, section 1707.1, states:

3 “Filed prescriptions shall constitute a transaction record that, together with
4 information that is readily retrievable in the pharmacy pursuant to Section 11164 shall show or
5 include the following:

6 “(a) The name(s) and address of the patient(s).

7 “(b) The date.

8 “(c) The character, including the name and strength, quantity, and directions for
9 use of the controlled substance involved.

10 “(d) The name, address, telephone number, category of professional licensure, and
11 the federal controlled substance registration number of the prescriber.”

12 24. California Code of Regulations, title 16, section 1716, states in part:

13 “Pharmacists shall not deviate from the requirements of a prescription except
14 upon the prior consent of the prescriber or to select the drug product in accordance with Section
15 4073 of the Business and Professions Code.”

16 25. California Code of Regulations, title 16, section 1761, states in part:

17 “(a) No pharmacist shall compound or dispense any prescription which contains
18 any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of
19 any such prescription, the pharmacist shall contact the prescriber to obtain the information
20 needed to validate the prescription.

21 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or
22 dispense a controlled substance prescription where the pharmacist knows or has objective reason
23 to know that said prescription was not issued for a legitimate medical purpose.”

24 26. Title 21, Code of Federal Regulations, section 1305.09 (hereinafter
25 “21 C.F.R. § 1305.09”), states in pertinent part:

26 “(a) The purchaser shall submit Copy 1 and Copy 2 of the order form to the
27 supplier, and retain Copy 3 in his own files.

28

CHARGES AND ALLEGATIONS

1
2 31. On February 21, 2007, the Board of Pharmacy received a referral from the
3 Food and Drug Administration (FDA). The referral concerned an investigation of a package
4 containing fifteen (15) bottles of Promethazine with Codeine that was mailed from Pasadena,
5 California to North Little Rock, Arkansas. One of the bottles was labeled as having originated
6 from Garos Pharmacy in Pasadena, California.

7 32. On or about July 12, 2007, Board inspectors conducted a routine
8 inspection of Respondent Garos Pharmacy and collected records. Respondent Basilyan was
9 interviewed during the inspection. Respondent Basilyan, owner and pharmacist-in-charge, stated
10 that the pharmacy purchased medications through HD Smith and returns were done through RX
11 Returns. Respondent Basilyan purchased the pharmacy from the previous owner sometime in
12 March 2006. Respondent Basilyan also stated that the pharmacy employed one delivery driver
13 for local deliveries, and did no out of state shipments.

14 33. Board inspectors requested Respondent Basilyan count the amount of
15 Promethazine with Codeine in the pharmacy. Respondent Basilyan was asked to produce the
16 starting DEA controlled substance inventory taken during the ownership change on February 27,
17 2006. Respondent Basilyan was asked to produce all records of acquisition and disposition for
18 Promethazine with Codeine. Respondent Basilyan was asked to produce all original
19 prescriptions for Promethazine with Codeine filled from February 27, 2006 to July 12, 2007.
20 Respondent Basilyan was asked to produce a printout for patient MS who sent the box to
21 Arkansas, but no profile was found¹. Respondent Basilyan was also asked to produce a Drug
22 Utilization Report (DUR) for Phenergan with Codeine filled from February 27, 2006 to July 12,
23 2007. A Board inspector conducted a drug audit of Respondent Pharmacy's acquisition and
24 disposition of Phenergan with Codeine. The audit result indicated multiple violations of
25 pharmacy law.

26
27
28 1. For purposes of patient confidentiality, all patients are referred to by their initials. Upon
a proper request for discovery, full names will be provided to Respondents.

1 FIRST CAUSE FOR DISCIPLINE

2 (Incomplete DEA-222 forms)

3 34. Respondent Garos Pharmacy and Respondent Basilyan are subject to
4 discipline pursuant to Code sections 4113, subdivision (b) and 4301, subdivision (o), on the
5 grounds of unprofessional conduct, in that Respondent Garos Pharmacy and Respondent
6 Basilyan violated 21 C.F.R. § 1305.09. The circumstances are as follows:

7 35. As part of the routine inspection of Respondent Pharmacy, the Board
8 inspector reviewed fifteen (15) DEA-222 order forms. None of the DEA-222 order forms were
9 being completed upon receipt of the drug.

10 SECOND CAUSE FOR DISCIPLINE

11 (Failure to Produce all Prescription Documents)

12 36. Respondent Garos Pharmacy and Respondent Basilyan are subject to
13 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
14 of unprofessional conduct, in that Respondent Garos Pharmacy and Respondent Basilyan
15 violated Code sections 4081 and 4332, and Health and Safety Code section 11179. The
16 circumstances are as follows:

17 37. A Board inspector requested that Respondents supply all original
18 prescriptions for Promethazine with Codeine from February 27, 2006 to July 12, 2007. The
19 Board inspector requested that Respondents supply a Drug Utilization Report for Phenergan with
20 Codeine filled from February 27, 2006 to July 12, 2007. After comparing the prescriptions that
21 were filled from the DUR and the original prescriptions received from Respondents, the Board
22 inspector determined that Respondents failed to provide the following prescriptions supplied to
23 the Board's inspector: Rx 129177, Rx 126325, Rx 126917, Rx 126919, Rx 129876, Rx 132366,
24 Rx 134056, Rx 136968, and Rx 136981.

25 ///

26 ///

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28 ///

THIRD CAUSE FOR DISCIPLINE

(Unauthorized refills)

38. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of unprofessional conduct, in that Respondents issued 189 refills of 72 prescriptions for controlled substances and/or dangerous drugs, without authorization, in violation of Code sections 4063 and 4306.5. Specifically, Respondents refilled unauthorized prescriptions which did not contain authorized refills on the original prescription as follows:

Patient	Prescription Number	Description of Violation
AA	Rx 132428	3 unauthorized prescription refills for Phenergan with Codeine.
VB	Rx 129979	4 unauthorized prescription refills for Phenergan with Codeine.
CC	Rx 129986	1 unauthorized prescription refill for Phenergan with Codeine.
MC	Rx 135137	2 unauthorized prescription refills for Phenergan with Codeine.
EC	Rx 132877	3 unauthorized prescription refills for Phenergan with Codeine.
JD	Rx 129691	1 unauthorized prescription refill for Phenergan with Codeine.
SD	Rx 129684	4 unauthorized prescription refills for Phenergan with Codeine.
LG	Rx 128492	1 unauthorized prescription refill for Phenergan with Codeine.
LG	Rx 132733	1 unauthorized prescription refill for Phenergan with Codeine.
WG	Rx 134281	4 unauthorized prescription refills for Phenergan with Codeine.
CH	Rx 127219	1 unauthorized prescription refill for Phenergan with Codeine.
CH	Rx 129591	1 unauthorized prescription refill for Phenergan with Codeine.
VH	Rx 129788	2 unauthorized prescription refills for Phenergan with Codeine.
DJ	Rx 133511	3 unauthorized prescription refills for Phenergan with Codeine.
JK	Rx 129098	1 unauthorized prescription refill for Phenergan with Codeine.
MK	Rx 135707	1 unauthorized prescription refill for Phenergan with Codeine.
GK	Rx 130244	2 unauthorized prescription refills for Phenergan with Codeine.
GK	Rx 132955	1 unauthorized prescription refill for Phenergan with Codeine.
FL	Rx 127515	4 unauthorized prescription refills for Phenergan with Codeine.
FL	Rx 129254	1 unauthorized prescription refill for Phenergan with Codeine.
FL	Rx 129694	2 unauthorized prescription refills for Phenergan with Codeine.

1	FL	Rx 130424	1 unauthorized prescription refill for Phenergan with Codeine.
2	GL	Rx 128353	2 unauthorized prescription refills for Phenergan with Codeine.
3	JL	Rx 128653	5 unauthorized prescription refills for Phenergan with Codeine.
4	JL	Rx 130438	2 unauthorized prescription refills for Phenergan with Codeine.
5	JL	Rx 132329	1 unauthorized prescription refill for Phenergan with Codeine.
6	PM	Rx 126778	1 unauthorized prescription refill for Phenergan with Codeine.
7	LM	Rx 132399	1 unauthorized prescription refill for Phenergan with Codeine.
8	EM	Rx 132743	4 unauthorized prescription refills for Phenergan with Codeine.
9	WM	Rx 129538	1 unauthorized prescription refill for Phenergan with Codeine.
10	AM	Rx 127252	1 unauthorized prescription refill for Phenergan with Codeine.
11	MP	Rx 129999	2 unauthorized prescription refills for Phenergan with Codeine.
12	DP	Rx 128304	2 unauthorized prescription refills for Phenergan with Codeine.
13	DP	Rx 132850	3 unauthorized prescription refills for Phenergan with Codeine.
14	SS	Rx 131553	4 unauthorized prescription refills for Phenergan with Codeine.
15	LS	Rx 127821	5 unauthorized prescription refills for Phenergan with Codeine.
16	LS	Rx 129178	5 unauthorized prescription refills for Phenergan with Codeine.
17	LS	Rx 130652	5 unauthorized prescription refills for Phenergan with Codeine.
18	LS	Rx 133120	3 unauthorized prescription refills for Phenergan with Codeine.
19	WS	Rx 127844	4 unauthorized prescription refills for Phenergan with Codeine.
20	WS	Rx 129077	4 unauthorized prescription refills for Phenergan with Codeine.
21	WS	Rx 130136	5 unauthorized prescription refills for Phenergan with Codeine.
22	WS	Rx 133053	2 unauthorized prescription refills for Phenergan with Codeine.
23	GS	Rx 128391	1 unauthorized prescription refill for Phenergan with Codeine.
24	AS	Rx 128165	5 unauthorized prescription refills for Phenergan with Codeine.
25	AS	Rx 132522	2 unauthorized prescription refills for Phenergan with Codeine.
26	CS	Rx 134385	1 unauthorized prescription refill for Phenergan with Codeine.
27	DS	Rx 128110	5 unauthorized prescription refills for Phenergan with Codeine.
28	RS	Rx 128158	5 unauthorized prescription refills for Phenergan with Codeine.
	VS	Rx 126931	1 unauthorized prescription refill for Phenergan with Codeine.
	WS	Rx 127692	2 unauthorized prescription refills for Phenergan with Codeine.
	WS	Rx 129350	5 unauthorized prescription refills for Phenergan with Codeine.
	WS	Rx 130272	3 unauthorized prescription refills for Phenergan with Codeine.

1	WS	Rx 131255	4 unauthorized prescription refills for Phenergan with Codeine.
2	WS	Rx 134877	2 unauthorized prescription refills for Phenergan with Codeine.
3	BS	Rx 132616	1 unauthorized prescription refill for Phenergan with Codeine.
4	MS	Rx 127411	1 unauthorized prescription refill for Phenergan with Codeine.
5	MS	Rx 132215	1 unauthorized prescription refill for Phenergan with Codeine.
6	LS	Rx 129126	5 unauthorized prescription refills for Phenergan with Codeine.
7	LS	Rx 132490	5 unauthorized prescription refills for Phenergan with Codeine.
8	RS	Rx 133243	4 unauthorized prescription refills for Phenergan with Codeine.
9	RS	Rx 135801	1 unauthorized prescription refill for Phenergan with Codeine.
10	TS	Rx 127780	3 unauthorized prescription refills for Phenergan with Codeine.
11	TS	Rx 128576	5 unauthorized prescription refills for Phenergan with Codeine.
12	TS	Rx 130014	5 unauthorized prescription refills for Phenergan with Codeine.
13	TS	Rx 132709	1 unauthorized prescription refill for Phenergan with Codeine.
14	TS	Rx 135072	2 unauthorized prescription refills for Phenergan with Codeine.
15	BT	Rx 126656	5 unauthorized prescription refills for Phenergan with Codeine.
16	BT	Rx 128716	2 unauthorized prescription refills for Phenergan with Codeine.
17	HT	Rx 128684	2 unauthorized prescription refills for Phenergan with Codeine.
18	FW	Rx 127518	2 unauthorized prescription refills for Phenergan with Codeine.
19	FW	Rx 128200	2 unauthorized prescription refills for Phenergan with Codeine.

FOURTH CAUSE FOR DISCIPLINE

(Dispensing of Controlled Substances Prescriptions Not Made on Required Forms)

39. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300 and 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, for violating Health and Safety Code section 11164, subdivision (a), in that Respondents dispensed prescriptions for controlled substances in Schedule V, that were not made on the required controlled substance prescription forms as specified in Health and Safety Code section 11162.1. Specifically, Respondents dispensed prescription Nos. Rx 132071, 132072, 128435, 128437, 135019, 135020, 129373, 129375, 133557, 133558, 132713, 132715, 134169, 134170, 134273, 134274, 133010, 133011, 130830, 130831, 136884, 136885, and 133454 (all for Phenergan with Codeine) from prescriber Josh Weng, which were not on the

1 required security form.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 (Wrong Prescriber Name)

4 40. Respondent Garos Pharmacy and Respondent Basilyan are subject to
5 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
6 of unprofessional conduct, in that Respondents filled one prescriptions (Rx 129591) incorrectly
7 with the wrong prescriber name (Hantman filled under Nasir), in violation of Code section 4076,
8 and California Code of Regulations, title 16, sections 1707.1 and 1716.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 (Incorrect Directions for Use)

11 41. Respondent Garos Pharmacy and Respondent Basilyan are subject to
12 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
13 of unprofessional conduct, in that Respondents filled prescriptions with incorrect directions twice
14 (Rx 136613 - 1 tsp, not 3 tsp; and Rx 128437 - q6h prn, not tid), in violation of Code section
15 4076, and California Code of Regulations, title 16, sections 1707.1 and 1716.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 (No Directions for Use, Filling with False Directions)

18 42. Respondent Garos Pharmacy and Respondent Basilyan are subject to
19 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
20 of unprofessional conduct, in that Respondents filled three (3) written prescriptions without
21 directions for use (Rx 136987, 134551, and 136424) a total of five (5) times. Code section 4040
22 and Health and Safety Code section 11206 both state a prescription must have directions for use.
23 Respondents violated California Code of Regulations, title 16, sections 1716 by varying from the
24 prescription and having the Respondent Basilyan create her own directions for use; Code section
25 4076 for an incorrect label; California Code of Regulations, title 16, section 1707.1 for having
26 incorrect information on the patient profile; and Health and Safety Code section 11158 for filling
27 the prescription even though it did not have the necessary directions form the prescriber.

28 ///

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Wrong Medication, Unknown Patient Harm)

3 43. Respondent Garos Pharmacy and Respondent Basilyan are subject to
4 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
5 of unprofessional conduct, in that Respondents filled two (2) prescriptions with the wrong
6 medication (Rx 129783 - Tylenol #3 filled with #4; and Rx 132807 - Robitussin with Codeine
7 filled with Phenergan with Codeine), in violation of California Code of Regulations, title 16,
8 section 1716.

9 NINTH CAUSE FOR DISCIPLINE

10 (Professional Judgment, Dispensing Same Drug Twice on Same Day)

11 44. Respondent Garos Pharmacy and Respondent Basilyan are subject to
12 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
13 of unprofessional conduct, in that Respondents dispensed the same medication twice on the same
14 day for two patients, in violation of Code section 4306.5, and California Code of Regulations,
15 title 16, sections 1707.1 and 1716. The circumstances are as follows:

16 a. **Patient CS:** Respondents filled two (2) prescriptions for Phenergan with
17 Codeine on January 15, 2007 for patient CS without justification (Rx 132344 and 132345).

18 b. **Patient VS:** Respondents filled Rx 129570 for Phenergan with Codeine
19 twice on October 5, 2006 for patient VS without justification.

20 TENTH CAUSE FOR DISCIPLINE

21 (Early Fills)

22 45. Respondent Garos Pharmacy and Respondent Basilyan are subject to
23 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, in conjunction
24 with Health and Safety Code section 11153, in that Respondents filled a Phenergan with Codeine
25 prescription for patient RF more than 16 days early on 5 occasions, in violation of Code section
26 4306.5, and California Code of Regulations, title 16, section 1716. The circumstances are as
27 follows:

28 a. **Patient RF:** On 11/7/06, Respondents filled Rx 129380 for Phenergan

1 the information needed to validate the prescription, in violation of California Code of
 2 Regulations, title 16, sections 1716 and 1761. Specifically, Respondents filled prescriptions for
 3 Phenergan with Codeine for patient DJ from 7 to 21 days early and patient DJ received 3 pints in
 4 the same week (2/22/07, 2/26/07, and 2/28/07). Respondents did not question the prescriptions
 5 and the fact that patient DJ received multiple prescriptions from four (4) different physicians
 6 (Weng, Khosa, Pullens, and Gill). The circumstances are as follows:

Rx date	Rx filled	Rx #	Patient	Amount	Directions	Days supply	Days early	MD	Refills	Script	unauthorized
1/26/07	1/26/07	132715	DJ	473	2 tsb q6h prn	11.8		Weng	none	script	
2/22/07	2/22/07	133367	DJ	473	2 tsb q6h prn	11.8		Khosa	none	script	
2/26/07	2/26/07	133454	DJ	473	1 tsb q6h prn	23.65	7.8	Weng	none	script	
2/28/07	2/28/07	133511	DJ	473	2 tsb q6h prn	11.8	21.65	Pullens	2	oral	
2/28/07	3/21/07	133511	DJ	473	2 tsb q6h prn	11.8		Pullens		oral	
3/26/07	3/26/07	134169	DJ	473	1 tsb q6h prn	23.65	6.8	Weng	none	script	
4/5/07	4/5/07	134493	DJ	473	2 tsb q6h prn	15.76	13.65	Khosa	1	script	
2/28/07	4/11/07	133511	DJ	473	2 tsb q6h prn	11.8	9.76	Pullens		oral	
2/28/07	4/25/07	133511	DJ	473	2 tsb q6h prn	11.8		Pullens		oral	unauthorized
4/26/07	4/26/07	135019	DJ	473	1 tsb q6h prn	23.65	10.8	Weng	none	script	
5/7/07	5/7/07	135334	DJ	473	2 tsb q6h prn	11.8	13.65	Gill	1	script	
5/7/07	5/18/07	135334	DJ	473	2 tsb q6h prn	11.8		Gill	1	script	
2/28/07	5/25/07	133511	DJ	473	2 tsb q6h prn	11.8		Pullens		oral	unauthorized
6/11/07	6/11/07	136181	DJ	473	2 tsb q6h prn	23.65		Gill	1	script	
2/28/07	6/14/07	133511	DJ	473	2 tsb q6h prn	11.8	20.65	Pullens		oral	unauthorized
6/11/07	6/18/07	136181	DJ	473	2 tsb q6h prn	23.65	7.8	Gill		script	

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide all Acquisition Documents)

48. Respondent Garos Pharmacy and Respondent Basilyan are subject to
 discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds
 of unprofessional conduct, in that Respondents violated Code sections 4081, 4105, subdivision
 (c), and 4332. The circumstances are as follows:

1 a. The Board requested that Respondents produce all records of acquisition
2 and disposition for Promethazine with Codeine. The Board inspector's audit comparing
3 purchasing invoices records and wholesalers' disposition records revealed Respondents failed to
4 provide the Board inspector with four (4) invoices (683390, 687823, 703475, and 709297).

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 (Unauthorized Refills/Early Refill)

7 49. Respondent Garos Pharmacy and Respondent Basilyan are subject to
8 discipline pursuant to Code sections 4300, 4301, subdivision (j) and/or subdivision (o), 4302,
9 and 4113, in conjunction with Code section 4063, Health and Safety Code section 11153, and
10 California Code of Regulations, title 16, sections 1716. The circumstances are as follows:

11 a. On November 26, 2007, the Board received a signed statement from Dr.
12 Nasir regarding his treatment of patient GK. Patient GK has been under the care of Dr. Nasir
13 since February 2004 and is a 50 year old with a history of chronic bronchitis with wheezing and
14 shortness of breath, who complained of pain and allergies. For this, Dr. Nasir prescribed
15 antibiotics with antitussive agents. Of the 20 prescriptions reviewed, Dr Nasir stated that eight
16 (8) were not authorized. Two prescriptions were filled on the same day. Respondents have some
17 paper prescriptions purporting to be from Dr. Nasir that he did not authorize. Prescription
18 #130244 was an oral prescription not authorized by Dr. Nasir and had no refills, yet it was filled
19 on October 5, 2006 and refilled on November 8, 2006 and November 27, 2006. Prescription
20 #132955 was written and filled on February 6, 2007 with no refills and yet Respondents refilled
21 the prescription on February 15, 2007. Respondents also filled the Phenergan with Codeine
22 prescriptions early (10+ days) on eight (8) occasions. From March 21, 2006 to June 27, 2007,
23 patient GK received 21 pints of Phenergran with Codeine, but if taken as ordered, the patient
24 would have only needed 17 pints. By refilling the prescriptions early, the patient received 4 extra
25 pints of Phenergran with Codeine.

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28 ///

Rx date	Rx filled	Rx #	Patient	Amount	Directions	Days supply	Days early	MD	Refills?	Script?	Refills OK on script?	MD OK'd?
	3/21/06	128917	GK	473	1 tsp tid	31		Nasir	none	script		Yes
3/21/06	3/21/06	126919	GK	473				Nasir		no script		Yes
4/17/06	4/27/06	127168	GK	473	1 tsp tid	31	30	Nasir	3	script		No
4/17/06	5/4/06	127168	GK	473	1 tsp tid	31	23	Nasir		script		No
4/17/06	6/20/06	127168	GK	473	1 tsp tid	31		Nasir		script		No
4/17/06	7/13/06	127168	GK	473	1 tsp tid	31		Nasir		script		No
3/21/06	8/7/06	126917	GK	473			5	Nasir		no script		Yes
3/21/06	9/6/06	126917	GK	473				Nasir		no script		No
10/5/06	10/5/06	130244	GK	473	2 tsp tid	15		Nasir	none	oral		No
10/5/06	11/8/06	130244	GK	473	2 tsp tid	15		Nasir		oral	unauthorized	No
10/5/06	11/27/06	130244	GK	473	2 tsp tid	15		Nasir		oral	unauthorized	Yes
12/20/06	12/20/06	131527	GK	473	1 tsp tid	31		Nasir	none	script		Yes
1/6/07	1/6/07	132510	GK	473	1 tsp tid	31	13	Nasir	none	script		Yes
1/25/07	1/26/07	132722	GK	473	1 tsp tid	31	10	Nasir	none	script		Yes
2/6/07	2/6/07	132955	GK	473	1 tsp tid	31	19	Nasir	none	script		Yes
2/6/07	2/15/07	132955	GK	473	1 tsp tid	31	21	Nasir		script	unauthorized	No
3/1/07	3/1/07	133534	GK	473	1 tsp tid	31	16	Nasir	1	script		No
3/12/07	3/12/07	133813	GK	473	1 tsp tid	31	19	Nasir	none	script		Yes
4/17/07	4/17/07	134826	GK	473	1 tsp tid	31		Nasir	none	script		Yes
5/29/07	5/29/07	135845	GK	473	1 tsp tid	31		Nasir	none	script		Yes
6/21/07	6/27/07	136695	GK	473	1 tsp tid	31		Nasir	none	script		Yes

FIFTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

50. Respondent Garos Pharmacy and Respondent Basilyan are subject to discipline pursuant to Code sections 4300, 4301, and 4302, for committing unprofessional conduct, as more fully discussed in paragraphs 34 through 49, above.

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1 OTHER MATTERS

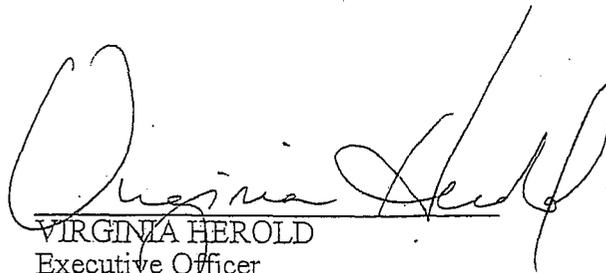
2 51. Business and Professions Code section 4307, subdivision (a) provides, in
3 pertinent part, that any person whose license has been revoked or is under suspension, or who has
4 failed to renew his or her license while it was under suspension, or who has been manager,
5 administrator, owner, member, officer, director, associate, or partner had knowledge of or
6 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
7 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
8 member, officer, director, associate, or partner of a licensee.

9 PRAYER

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

- 12 A. Revoking or suspending Pharmacy Permit Number PHY 47485, issued to
13 Garos Pharmacy.
- 14 B. Revoking or suspending Pharmacist License Number RPH 56808, issued
15 to Madlen Basilyan.
- 16 C. Ordering Garos Pharmacy and Madlen Basilyan to pay the Board of
17 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 125.3;
- 19 D. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 6/23/09

22
23
24 

25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant