

**California State Board of Pharmacy**

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Desert Drugs</u>	Case No. <u>3917</u>
Address of Record: <u>204 West Avenue J</u> <u>Lancaster CA 93534</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. 3917, I hereby request to surrender my premises license, License No. PHY 46289. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Morgan A. Chodley
Applicant's Signature

11-28-2014
Date

Virginia Deard
Executive Officer's Approval

12/18/14
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 3917

OAH No. 2014010146

**MOAZZEM H. CHOWDHURY dba
DESERT DRUGS, MOAZZEM H.
CHOWDHURY, PHARMACIST-IN-CHARGE**
204 West Avenue J
Lancaster, CA 93534

Original Pharmacy Permit No. PHY 46289

and

MOAZZEM HOSSAIN CHOWDHURY
28419 N. Horseshoe Circle
Santa Clarita, CA 91390

Original Pharmacist License No. RPH 46737

Respondents.

DECISION AND ORDER

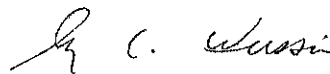
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 22, 2014.

It is so ORDERED on October 15, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3917

11 **MOAZZEM H. CHOWDHURY dba**
12 **DESERT DRUGS, MOAZZEM H.**
13 **CHOWDHURY, PHARMACIST-IN-**
CHARGE
14 **204 West Avenue J**
Lancaster, CA 93534

OAH No. 2014010146
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Original Pharmacy Permit No. PHY 46289**

16 and

17 **MOAZZEM HOSSAIN CHOWDHURY**
18 **28419 N. Horseshoe Circle**
Santa Clarita, CA 91390

19 **Original Pharmacist License No. RPH**
20 **46737**

Respondents.

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

24 **PARTIES**

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

1 2. Respondents Desert Drugs; Moazzem Hossain Chowdhury (Respondents) are both
2 represented in this proceeding by attorney Tony J. Park, whose address is: California Pharmacy
3 Lawyers, 6789 Quail Hill Pkwy., #405, Irvine, CA 92603-4233.

4 **Moazzem H. Chowdhury dba Desert Drugs**

5 3. On or about February 24, 2003, the Board of Pharmacy issued Original Pharmacy
6 Permit Number PHY 46289 to Moazzem H. Chowdhury to do business as Desert Drugs
7 (Respondent Desert Drugs). The Original Pharmacy Permit was in full force and effect at all
8 times relevant to the charges brought in Accusation No. 3917. Original Pharmacy Permit
9 Number PHY 46289 will expire on February 1, 2015, unless renewed.

10 **Moazzem Hossain Chowdhury**

11 4. On or about September 16, 1993, the Board of Pharmacy issued Original Pharmacist
12 License Number RPH 46737 to Moazzem Hossain Chowdhury (Respondent Chowdhury). The
13 Pharmacy License was in full force and effect at all times relevant to the charges brought in
14 Accusation No. 3917. Original Pharmacist License Number RPH 46737 will expire on February
15 28, 2015, unless renewed.

16 **JURISDICTION**

17 5. Accusation No. 3917 was filed before the Board of Pharmacy (Board), Department of
18 Consumer Affairs, and is currently pending against Respondent Desert Drugs and Chowdhury.
19 The Accusation and all other statutorily required documents were properly served on
20 Respondents on November 27, 2013. Respondents timely filed their Notice of Defense contesting
21 the Accusation. A copy of Accusation No. 3917 is attached as exhibit A and incorporated herein
22 by reference.

23 **ADVISEMENT AND WAIVERS**

24 6. Respondents Desert Drugs and Chowdhury have carefully read, fully discussed with
25 counsel, and understands the charge and allegation in Accusation No. 3917. Respondents have
26 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
27 Settlement and Disciplinary Order.

28 ///

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

8. Respondents Desert Drugs and Chowdhury voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents Desert Drugs and Chowdhury admit the truth of each and every charge and allegation in Accusation No. 3917. Respondents agree that their licenses are subject to discipline and agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 46289 issued to Moazzem H. Chowdhury doing business as Desert Drugs (Respondent Desert Drugs) and Original Pharmacist License Number RPH 46737 issued to Moazzem Hossain Chowdhury (Respondent Chowdhury) are revoked. However, each revocation is stayed and each Respondent is placed on probation for four (4) years on the following terms and conditions.

TERMS APPLICABLE TO BOTH RESPONDENTS

1. Obey All Laws

Respondents Desert Drugs and Chowdhury shall obey all state and federal laws and regulations. Respondents shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondents' licenses or which is related to the practice of pharmacy

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

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

4 **2. Report to the Board**

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

14 **3. Interview with the Board**

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

21 **4. Cooperate with Board Staff**

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

26 **5. Probation Monitoring Costs**

27 Respondents Desert Drugs and Chowdhury shall pay any costs associated with probation
28 monitoring as determined by the Board each and every year of probation. Such costs shall be

1 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such
2 costs by the deadline(s) as directed shall be considered a violation of probation.

3 **6. Status of License**

4 Respondents Desert Drugs and Chowdhury shall, at all times while on probation, maintain
5 an active, current license with the Board, including any period during which suspension or
6 probation is tolled. Failure to maintain an active, current license shall be considered a violation
7 of probation. If Respondents Desert Drugs and Chowdhury submits an application to the Board,
8 and the application is approved, for a change of location, change of permit or change of
9 ownership, the Board shall retain continuing jurisdiction over the license, and the Respondent
10 Desert Drugs and Chowdhury shall remain on probation as determined by the Board.

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

15 **7. Violation of Probation**

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

21 If either Respondent violates probation in any respect, the Board, after giving Respondents
22 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order
23 that was stayed. Notice and opportunity to be heard are not required for those provisions stating
24 that a violation thereof may lead to automatic termination of the stay and/or revocation of the
25 license. If a petition to revoke probation or an accusation is filed against Respondents Desert
26 Drugs and Chowdhury during probation, the Board shall have continuing jurisdiction and the
27 period of probation shall be automatically extended until the petition to revoke probation or
28 accusation is heard and decided.

1 **8. Completion of Probation**

2 Upon written notice by the Board or its designee indicating successful completion of
3 probation, Respondents Desert Drugs and Chowdhury's licenses will be fully restored.

4 **ADDITIONAL TERMS APPLICABLE TO RESPONDENT**
5 **MOAZZEM H. CHOWDHURY DBA DESERT DRUGS**

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

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

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

18 Respondent Desert Drugs shall also, by the effective date of this decision, arrange for the
19 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
20 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
21 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
22 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
23 days of its provision to the pharmacy's ongoing patients, Respondent Desert Drugs shall provide a
24 copy of the written notice to the Board. For the purposes of this provision, "ongoing patients"
25 means those patients for whom the pharmacy has on file a prescription with one or more refills
26 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
27 days.

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

5 Respondent Desert Drugs further stipulates that it shall reimburse the Board for its costs of
6 investigation and prosecution prior to the acceptance of the surrender.

7 **10. Notice to Employees**

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

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

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

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

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1 **12. Posted Notice of Probation**

2 Respondent Desert Drugs shall prominently post a probation notice provided by the Board
3 in a place conspicuous and readable to the public. The probation notice shall remain posted
4 during the entire period of probation.

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

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

10 **13. Community Services Program**

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

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

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

21 **14. Reimbursement of Board Costs**

22 As a condition precedent to successful completion of probation, Respondent Desert Drugs
23 shall pay to the Board its costs of investigation and prosecution in the amount of \$4,254.75 (Four
24 Thousand Two Hundred Fifty-Four Dollars and Seventy Five Cents). Respondents Desert Drugs
25 and Chowdhury shall be jointly and severally liable for payment to the Board of \$4,254.75 (Four
26 Thousand Two Hundred Fifty-Four Dollars and Seventy-Five Cents). Respondent Desert Drugs
27 shall make said payments as follows: Respondent Desert Drugs shall make ten (10) quarterly
28

1 payments of \$425.48 (Four Hundred Twenty-Five Dollars and Forty-Eight Cents) every ninety
2 (90) days until the entire balance is paid in full.

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

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

8 **ADDITIONAL TERMS APPLICABLE TO RESPONDENT**
9 **MOAZZEM H. CHOWDHURY**

10 **15. Continuing Education**

11 Respondent Chowdhury shall provide evidence of efforts to maintain skill and knowledge
12 as a Pharmacist as directed by the Board or its designee.

13 **16. Notice to Employers**

14 During the period of probation, Respondent Chowdhury shall notify all present and
15 prospective employers of the decision in Case Number 3917 and the terms, conditions and
16 restrictions imposed on Respondent Chowdhury by the decision, as follows:

17 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
18 Respondent Chowdhury undertaking any new employment, Respondent Chowdhury shall cause
19 his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed
20 during Respondent Chowdhury's tenure of employment) and owner to report to the Board in
21 writing acknowledging that the listed individual(s) has/have read the decision in Case Number
22 3917, and terms and conditions imposed thereby. It shall be Respondent Chowdhury's
23 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
24 acknowledgment(s) to the Board.

25 If Respondent Chowdhury works for or is employed by or through a pharmacy employment
26 service, Respondent Chowdhury must notify his direct supervisor, pharmacist-in-charge, and
27 owner at every entity licensed by the Board of the terms and conditions of the decision in Case
28

1 Number 3917 in advance of the Respondent Chowdhury commencing work at each licensed
2 entity. A record of this notification must be provided to the Board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of Respondent Chowdhury undertaking any new employment by or through a pharmacy
5 employment service, Respondent Chowdhury shall cause his direct supervisor with the pharmacy
6 employment service to report to the Board in writing acknowledging that he has read the decision
7 in Case Number 3917 and the terms and conditions imposed thereby. It shall be Respondent
8 Chowdhury's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
9 acknowledgment(s) to the Board.

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

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

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

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

24 **18. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, Respondent Chowdhury
26 shall pay to the Board its costs of investigation and prosecution in the amount of \$4,254.75 (Four
27 Thousand Two Hundred Fifty-Four Dollars and Seventy Five Cents). Respondents Desert Drugs
28 and Chowdhury shall be jointly and severally liable for payment to the Board of \$4,254.75 (Four

1 Thousand Two Hundred Fifty-Four Dollars and Seventy-Five Cents). Respondent Chowdhury
2 shall make said payments as follows: Respondent Chowdhury shall make ten (10) quarterly
3 payments of \$425.48 (Four Hundred Twenty-Five Dollars and Forty-Eight Cents) every ninety
4 (90) days until the entire balance is paid in full.

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

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

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

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

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

25 **20. Notification of a Change in Employment, Name, Address, or Phone**

26 Respondent Chowdhury shall notify the Board in writing within ten (10) days of any
27 change of employment. Said notification shall include the reasons for leaving, the address of the
28 new employer, the name of the supervisor and owner, and the work schedule. Respondent

1 Chowdhury shall further notify the Board in writing within ten (10) days of a change in name,
2 residence address, mailing address, or phone number.

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

5 **21. Tolling of Probation**

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

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

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

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

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1 **22. Remedial Education**

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

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

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

19 **23. No New Ownership of Licensed Premises**

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

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

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

17 **25. Ethics Course**

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

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

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28 ///

1 ACCEPTANCE

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

6
7 DATED: 09-03-2014

8 Moazzem H. Chowdhury
9 MOAZZEM H. CHOWDHURY DBA DESERT
10 DRUGS
11 Respondent.

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

16 DATED: 09-03-2014

17 Moazzem H. Chowdhury
18 MOAZZEM H. CHOWDHURY
19 Respondent

20 I have read and fully discussed with Respondent Desert Drugs; Moazzem Hossain
21 Chowdhury the terms and conditions and other matters contained in the above Stipulated
22 Settlement and Disciplinary Order. I approve its form and content.

23 DATED: 09/03/2014

24 Tony J. Park
25 Tony J. Park
26 Attorney for Respondents

27 ///

28 ///

///

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ENDORSEMENT

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

Dated: September 5, 2014

Respectfully submitted,

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



MICHAEL BROWN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3917

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 MICHAEL BROWN
Deputy Attorney General
4 State Bar No. 231237
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5 Los Angeles, CA 90013
Telephone: (213) 897-2095
6 Facsimile: (213) 897-2804
E-mail: MichaelB.Brown@doj.ca.gov
7 *Attorneys for Complainant*

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. 3917

13 **MOAZZEM H. CHOWDHURY dba**
14 **DESERT DRUGS, MOAZZEM H.**
15 **CHOWDHURY, PHARMACIST-IN-**
16 **CHARGE**

A C C U S A T I O N

17 **204 West Avenue J**
18 **Lancaster, CA 93534**

19 **Original Pharmacy Permit No. PHY 46289**

20 **and**

21 **MOAZZEM HOSSAIN CHOWDHURY**
22 **28419 N. Horseshoe Circle**
23 **Santa Clarita, CA 91390**

24 **Original Pharmacist License No. RPH 46737**

25 Respondents.

26 Complainant alleges:

27 **PARTIES**

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

///

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1 **Moazzem H. Chowdhury dba Desert Drugs**

2 2. On or about February 24, 2003, the Board of Pharmacy issued Original Pharmacy
3 Permit Number PHY 46289 to Moazzem H. Chowdhury to do business as Desert Drugs
4 (Respondent Desert Drugs). The Original Pharmacy Permit was in full force and effect at all
5 times relevant to the charges brought herein and will expire on February 1, 2014, unless renewed.

6 **Moazzem Hossain Chowdhury**

7 3. On or about September 16, 1993, the Board of Pharmacy issued Original Pharmacist
8 License Number RPH 46737 to Moazzem Hossain Chowdhury (Respondent Chowdhury). The
9 Original Pharmacist License was in full force and effect at all times relevant herein and will
10 expire on February 28, 2015, unless renewed.

11 **JURISDICTION**

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

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

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

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

24 8. Section 4300.1 of the Code states:

25 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
26 operation of law or by order or decision of the board or a court of law, the placement of a license
27 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
28

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTORY PROVISIONS

4 9. Section 4081 of the Code states:

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

14 10. Section 4301 of the Code states:

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

18 ...

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

21

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

26 11. Section 11167.5 of the Health & Safety Code states:

27 "(a) An order for a controlled substance classified in Schedule II for a patient of a licensed
28 skilled nursing facility, a licensed intermediate care facility, a licensed home health agency, or a

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

20 12. Health and Safety Code section 11200, states:

21 ...

22 "(c) No prescription for a Schedule II substance may be refilled."

23 13. California Code of Regulations, title 16, section 1764 states:

24 "No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the
25 therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any
26 medical information furnished by the prescriber with any person other than the patient or his or
27 her authorized representative, the prescriber or other licensed practitioner then caring for the
28

1 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to
2 receive such information."

3 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
4 administrative law judge to direct a licentiate found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
7 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
8 included in a stipulated settlement.

9 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

10 15. Section 4021 of the Code states:

11 "‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
12 11053) of Division 10 of the Health and Safety Code."

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

14 "‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use,
15 except veterinary drugs that are labeled as such, and includes the following:

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

18 ...

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

21 17. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code
22 section 11055(c)(8) and is a dangerous drug pursuant to Business and Professions Code section
23 4022.

24 18. Morphine is a Schedule II controlled substance pursuant to Health and Safety
25 Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code
26 section 4022.

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Unauthorized Disclosure of Patient Records)

3 As to Respondents Desert Drugs and Chowdhury

4 19. Respondents are subject to disciplinary action under section 4301, subdivisions (j)
5 and (o) for violating California Code of Regulations, title 16, section 1764 in that Respondents
6 disclosed unauthorized patients records. The circumstances are as follows:

7 20. On or about June 8, 2010, a Board inspector conducted a routine inspection of
8 Respondent Desert Drugs. The inspection revealed that Respondents discarded confidential
9 patient's information into the regular pharmacy trash without first shredding or redacting patient's
10 specific information.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct – Furnishing Without a Prescription)

13 As to Respondents Desert Drugs and Chowdhury

14 21. Respondents are subject to disciplinary action pursuant to Code section 4301,
15 subdivisions (j) and (o) in that Respondents furnished prescription medications without
16 prescriptions or without proper exemptions from the prescription requirement, in violation of
17 Health and Safety Code section 11200, subdivision (c) and Health and Safety Code section
18 11167.5, subdivision (a). The circumstances are as follows:

19 22. On or about June 8, 2010, a Board inspector conducted a routine inspection of
20 Respondent Desert Drugs. The inspection revealed clerks Erica Castagneeto, Blanca Salinas,
21 intern Tang Vo and Respondent Chowdhury received verbal Schedule II refill authorizations
22 (Morphine ER 15mg RX#256294, Morphine 20mg/ml RX#254787, Morphine ER 30mg
23 RX#254808, Morphine IR 15mg RX#254721, Morphine ER 30mg RX#254237, Morphine ER
24 30mg RX#254817, Morphine ER 15mg RX#254816) from hospice nurses. Respondents
25 dispensed the medications to patients without the pharmacist first obtaining verification from the
26 physician, receiving any signed documents substantiating the oral CII prescriptions order, or
27 obtaining the signature of the person receiving the controlled substance on the prescription.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Failure to Maintain Dangerous Drugs Acquisition Records and Current Inventory)

3 As to Respondents Desert Drugs and Chowdhury

4 23. Respondents are subject to disciplinary action pursuant to Code sections 4301,
5 subdivisions (j) and (o) for violating Code section 4081, subdivision (a) for failing to meet the
6 requirements for maintaining an accurate inventory. The circumstances are as follows:

7 24. On or about June 8, 2010, a Board inspector conducted a routine inspection of
8 Respondent Desert Drugs. The inspection revealed Respondents purchased dangerous drugs from
9 Respondent Valley Pharmacy, Respondent Medicine Shoppe and Acton Pharmacy without
10 obtaining accurate sales records from the supplying pharmacies. As a result, a current and
11 accurate inventory of drugs could not be ascertained.

12 25. A drug audit of Fentanyl 50mcg and Fentanyl 100mcg was conducted for the time
13 period between June 19, 2009 to June 8, 2010 and Respondents were unable to account for 20
14 patches of Fentanyl 50mcg and 1 patch of Fentanyl 100mcg.

15 **DISCIPLINE CONSIDERATIONS**

16 26. To determine the degree of discipline, if any, to be imposed on Respondent Desert
17 Pharmacy, Complainant alleges that on or about January 13, 2010, in a prior action, the Board of
18 Pharmacy issued Citation Number CI 2008 37690 and ordered Respondent to pay a citation fine
19 of \$5,000.00. That Citation is now final and is incorporated by reference as if fully set forth.

20 27. To determine the degree of discipline, if any, to be imposed on Respondent
21 Chowdhury, Complainant alleges that on or about January 13, 2010, in a prior action, the Board
22 of Pharmacy issued Citation Number CI 2009 42457 and ordered Respondent to pay a citation
23 fine of \$5,000.00. That Citation is now final and is incorporated by reference as if fully set forth.

24 **PRAYER**

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

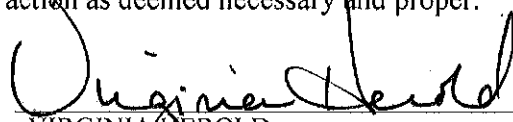
27 1. Revoking or suspending Original Pharmacy Permit Number PHY 46289, issued to
28 Moazzem H. Chowdhury to do business as Desert Drugs;

1 2. Revoking or suspending Original Pharmacist License Number RPH 46737, issued to
2 Moazzem Hossain Chowdhury;

3 3. Ordering Desert Drugs and Moazzem Hossain Chowdhury to pay the Board of
4 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
5 Business and Professions Code section 125.3; and

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

7
8 DATED: 11/19/13


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

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