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

In the Matter of the Accusation Against:

Case No. 5058

WALGREENS PHARMACY NO. 2306

OAH No. 2014100373

1138 West Tennyson Hayward, CA 94544

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER – AS TO LAI WING CHENG ONLY

Original Permit No. PHY 36136

LAI WING CHENG 5413 Reseda Circle Fremont, CA 94538

Pharmacist License No. RPH 46865

EZBON PRYOR 249 W. Jackson Street, #104 Hayward, CA 94544

Pharmacy Technician License No. TCH 11293

Respondents.

DECISION AND ORDER

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

This decision shall become effective on May 20, 2015.

It is so ORDERED on May 13, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STAN C. WEISSER, Board President

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1	KAMALA D. HARRIS							
2	Attorney General of California FRANK H. PACOE	·						
3	Supervising Deputy Attorney General CHAR SACHSON							
4	Deputy Attorney General State Bar No. 161032							
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6	Telephone: (415) 703-5558 Facsimile: (415) 703-5480							
7	Attorneys for Complainant							
8	BEFORE THE BOARD OF PHARMACY							
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA							
10	·							
11	In the Matter of the Accusation Against:	Case No. 5058						
12	WALGREENS PHARMACY NO. 2306	OAH No. 2014100373						
13	1138 West Tennyson Hayward, CA 94544	STIPULATED SETTLEMENT AND						
14	Original Permit No. PHY 36136	DISCIPLINARY ORDER – as to LAI WING CHENG ONLY						
15	LAI WING CHENG 5413 Reseda Circle							
16	Fremont, CA 94538							
17	Pharmacist License No. RPH 46865	·						
18	EZBON PRYOR 249 W. Jackson Street, #104							
-19	Hayward, CA 94544							
20	Pharmacy Technician License No. TCH 11293							
21	Respondents.							
22	Respondents.							
23	In the interest of a prompt and speedy settlement of this matter, consistent with the public							
24	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,							
25	the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will							
26	be submitted to the Board for approval and adoption as the final disposition of the Accusation.							
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28	111							
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PARTIES

- 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Char Sachson, Deputy Attorney General.
- 2. Respondent Lai Wing Cheng ("Respondent") is represented in this proceeding by attorney Paul Chan, whose address is: 2311 Capitol Avenue, Sacramento, CA 95816.
- 3. On or about March 4, 1994, the Board of Pharmacy issued Pharmacist License No. RPH 46865 to Respondent Lai Wing Cheng. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5058 and will expire on October 31, 2015, unless renewed.

JURISDICTION

- 4. Accusation No. 5058 was filed before the Board of Pharmacy ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 7, 2014.

 Respondent timely filed his Notice of Defense contesting the Accusation.
- 5. A copy of Accusation No. 5058 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5058. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 7. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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

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

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 9. Respondent admits the truth of each and every charge and allegation in Accusation No. 5058.
- 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees 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 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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.
- 12. 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.
- 13. 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.

14. 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 Pharmacist License No. RPH 46865 issued to Respondent Lai Wing Cheng is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years on the following terms and conditions.

1. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for every year of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

2. Remedial Education

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to pharmacy security, pharmacy thefts, and prescription drug abuse. The program of remedial education shall consist of at least 10 hours, which shall be completed within one year of the effective date of the decision at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

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is provided to the board or its designee.

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

3. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

4. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent 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 respondent's Original Pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

5. Report to the Board

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

6. Interview with the Board

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

7. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

8. Continuing Education

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

9. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5058 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

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Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5058, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5058 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 5058 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

10. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as

Designated Representative-in-Charge, or Serving as a Consultant

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

11. Probation Monitoring Costs

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

12. Status of License

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

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

13. License Surrender While on Probation/Suspension

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

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

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

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

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

15. Tolling of Probation

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

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

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

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

16. Violation of Probation

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

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

17. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

ACCEPTANCE

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

- 1	<u> </u>				
1 2	DATED: 3-5-2015 Son Wang Change				
3	Respondent				
4	I have read and fully discussed with Respondent Lai Wing Cheng the terms and conditions				
5	and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve				
6	its form and content.				
7 8	DATED: 3-5-15 PAUL CHAN Attorney for Respondent				
9	<u>ENDORSEMENT</u>				
10	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully				
11	submitted for consideration by the Board of Pharmacy.				
12	Dated: 4/16/15 Respectfully submitted,				
13	KAMALA D. HARRIS				
14	Attorney General of California FRANK H. PACOE				
15	Supervising Deputy Attorney General				
16	Mud				
17	CHAR SACHSON Deputy Attorney General				
18	Attorneys for Complainant				
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Exhibit A

Accusation No. 5058

1	Kamala D. Harris						
2	Attorney General of California FRANK H. PACOE	;					
3	Supervising Deputy Attorney General						
	CHAR SACHSON Deputy Attorney General						
4	State Bar No. 161032 455 Golden Gate Avenue, Suite 11000						
5	San Francisco, CA 94102-7004 Telephone: (415) 703-5558						
6	Facsimile: (415) 703-5480 Attorneys for Complainant						
7							
8	BEFORE THE BOARD OF PHARMACY						
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA						
10							
11	In the Matter of the Accusation Against:	Case No. 5058					
12	WALGREENS PHARMACY NO. 2306 1138 West Tennyson						
13		ACCUSATION					
14	Original Permit No. PHY 36136						
	LAI WING CHENG						
15	5413 Reseda Circle Fremont, CA 94538						
16 17	Pharmacist License No. RPH 46865						
18	EZBON PRYOR						
	249 W. Jackson Street, #104 Hayward, CA 94544						
19	Pharmacy Technician License No. TCH						
20	11293	4 1 6					
21	Respondents.						
22							
23	Complainant alleges:						
24	PARTIES						
25	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity						
26	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.						
27	2. On or about March 5, 1990, the Board of Pharmacy issued Original Permit Number						
28	PHY 36136 to Walgreens No. 2306 (Respondent Walgreens). The Original Permit was in full						
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force and effect at all times relevant to the charges brought herein and will expire on May 1, 2015, unless renewed.

- 3. On or about March 4, 1994, the Board of Pharmacy issued Pharmacist License Number RPH 46865 to Lai Wing Cheng (Respondent Cheng). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.
- 4. On or about January 5, 1994, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 11293 to Ezbon Pryor (Respondent Pryor). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

JURISDICTION

- 5. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 6. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 7. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 8. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.
- 10. Code section 4060 provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Section 4081 of the Code provides, in pertinent part, that every pharmacy shall keep a current inventory of all dangerous drugs and dangerous devices, and that the owner, officer, and partner of a pharmacy shall be jointly responsible with the pharmacist in charge for maintaining the inventory of dangerous drugs and dangerous devices.
 - 12. Section 4113, subdivision (c) of the Code states:
- "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."
- 13. California Code of Regulations, title 16, section 1714, subdivision (b) provides that each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

- 14. California Code of Regulations, title 16, section 1714, subdivision (d) provides that each pharmacist licensed by the board shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices, and that possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.
- 15. Health and Safety Code section 11377(a) states, in pertinent part, that no person shall possess Schedule III, IV or V controlled substances, unless upon the valid prescription of a physician or other licensed health care provider.
- 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 17. Section 4021 of the Code states:
- "Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 18. Section 4022 of the Code states, in pertinent part:
- "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 19. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs.

- 20. **Diazepam** (brand name **Valium**) is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is an anti-anxiety agent, anti-convulsant agent, and sedative.
- 21. Phenergan with Codeine syrup is a brand name for a compound consisting of the antihistamine promethazine, a dangerous drug as designated by Business and Professions Code section 4022, and codeine, a Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and Professions Code section 4022. This drug is also known generically as Promethazine with Codeine syrup. It is an antihistamine/antitussive.

FACTUAL BACKGROUND

- 22. Between June 10, 2011 and August 15, 2012, while Respondent Cheng was serving as Pharmacist in Charge (PIC) at Walgreens Pharmacy No. 2306 (PHY 36136) in Hayward, CA, Respondent Pryor was employed as a pharmacy technician at that location.
- 23. Between June 10, 2011 and August 15, 2012, Respondent Pryor used his access to divert/steal controlled substances and dangerous drugs, including **Hydrocodone with APAP**, **promethazine/codeine syrup and diazepam**, controlled substance/dangerous drug products.
- 24. The exact number of instances of diversion/theft by Respondent Pryor, and the full quantity of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of investigations conducted by the Board and by the pharmacy, the following were among the observations and revelations reported:
- a. Surveillance cameras installed in the pharmacy showed Respondent Pryor engaged in suspicious behavior with regard to controlled substances diazepam and promethazine with codeine. Specifically, on July 17, 2012, cameras depicted Respondent Pryor looking around then walking up to the promethazine/codeine, removing one bottle and walking to the back of the pharmacy out of view of the camera, which is inconsistent with pharmacy policy. Pharmacy policy required employees to take controlled substances directly to the prescription filling table.

- b. On July 31, 2012, pharmacy surveillance cameras depicted Respondent Pryor looking around, then walking up to the pill dispenser machine, opening the cassette containing the diazepam pills, pouring an unknown number of pills into his hand a total of three times, and putting them into his pocket. The camera showed him putting the cassette back into the machine, then picking up pills that had fallen to the floor as he poured them into his hand. The surveillance camera also showed that on July 31, 2012, Respondent Pryor removed two bottles of promethazine/codeine from the shelf and walked out of the view of the camera, towards the back of the pharmacy, inconsistent with pharmacy policy.
- c. Subsequent audits of the controlled substances stock of Walgreens Pharmacy
 No. 2306 revealed a shortage of approximately 25,381 tablets of **Hydrocodone with APAP**10/325 (generic Norco), 120,016 ml of promethazine/codeine, and 1880 tablets of diazepam 10
 mg for the period from June 10, 2011 to August 15, 2012.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Pharmacy Security)

25. Respondent Walgreens and Respondent Cheng are subject to discipline under section 4301(j) and/or (o), and/or section 4113(e), of the Code, in combination with California Code of Regulations, title 16, sections 1714(b) and/or 1714(d), in that, as described in paragraphs 22-24 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of pharmacy, by acts including failure(s) to maintain pharmacy facilities, space, fixtures, and equipment so that drugs were safely and properly prepared, maintained, secured and distributed.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate and Secure Controlled Substances Inventory)

26. Respondent Walgreens and Respondent Cheng are subject to discipline under section 4301(j) and/or (o) and/or section 4113(c) of the Code, in combination with section 4081 of the Code, in that, as described in paragraphs 22-24 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to

1	violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of				
2	pharmacy, by acts including failure(s) to maintain an accurate and secure inventory of all				
3	controlled substances.				
4	THIRD CAUSE FOR DISCIPLINE				
5	(Illegal Possession of Controlled Substances)				
6	27. Respondent Pryor is subject to discipline under section 4301(j) and/or (o), in				
7	combination with section 4060 of the Code and Health and Safety Code section 11377(a), in that				
8	as described in paragraphs 22-25 above, Respondent Pryor illegally possessed controlled				
9	substances.				
10	FOURTH CAUSE FOR DISCIPLINE				
11	(Unprofessional Conduct – Dishonesty, Fraud, Deceit or Corruption)				
12	28. Respondent Pryor is subject to discipline under section 4301(f), in that, as described				
13	in paragraphs 22-25 above, Respondent Pryor committed acts involving moral turpitude,				
14	dishonesty, fraud, deceit, or corruption.				
15	PRAYER				
16	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,				
17	and that following the hearing, the Board of Pharmacy issue a decision:				
18	1. Revoking or suspending Original Permit Number PHY 36136, issued to Respondent				
19	Walgreens Pharmacy No. 2306;				
20	2. Revoking or suspending Pharmacist License Number RPH 46865, issued to				
21	Respondent Lai Wing Cheng;				
22	3. Revoking or suspending Pharmacist Technician License Number TCH 11293, issued				
23	to Respondent Ezbon Pryor;				
24	4. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the				
25	investigation and enforcement of this case, pursuant to Business and Professions Code section				
26	125.3;				
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1	5.	Taking such other and further a	ction as deemed nec	essary and proper.	
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4	DATED: _	7/26/14) i ainie	- Seide	
5			VIRGINIA MEROLI)	
6			Executive Officer Board of Pharmacy Department of Consu State of California	ımer Affairs	
7	,		State of California Complainant		
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Accusation