

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

**In the Matter of the Petition for Early Termination of
Probation by:**

CEDAR PHARMACY AND MEDICAL SUPPLIES INC. and

PETER NNAMDI ONWUMERE, Petitioners

Case No. 5488

OAH No. 2021070815

DECISION

This matter was heard by video conference before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on July 29, 2021. Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided at the hearing.

Kristina T. Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Ivan Petrzelka, Attorney at Law, represented petitioners Cedar Pharmacy and Medical Supplies Inc. (Cedar Pharmacy) and Peter Nnamdi Onwumere (petitioner Onwumere).

Evidence was received, the record was closed, and the matter was submitted for decision on July 29, 2021.

FACTUAL FINDINGS

Background and Procedural History

1. On October 7, 2002, the Board issued petitioner Onwumere Pharmacist License Number RPH 53590. Petitioner Onwumere's license will expire on November 30, 2021, unless renewed or revoked.

2. On June 1, 2010, the Board issued Cedar Pharmacy, Pharmacy License Number PHY 50262. Cedar Pharmacy's license will expire on June 1, 2022, unless renewed or revoked.

3. On July 30, 2016, complainant Virginia K. Herold, a former Executive Officer for the Board, issued an Accusation against Cedar Pharmacy with petitioner Onwumere as president and Pharmacist-In-Charge (PIC). Complainant alleged that petitioners sold 68 prescriptions for 23 different patients in a single transaction totaling more than \$10,000 on February 24, 2012. Complainant further alleged that the following day, February 25, 2012, petitioners sold 36 prescriptions for 12 patients totaling more than \$5,800. The Accusation additionally stated that a Board audit determined that between January 1, 2011 and January 21, 2013, Cedar Pharmacy dispensed nearly 13,000 controlled substances, the majority of which were prescribed by a single doctor and paid for with cash.

Based on these factual allegations, complainant brought causes for discipline against petitioners, including: (1) clearly excessive furnishing of controlled substances;

(2) violation of statute or regulation governing controlled substances and dangerous drugs; (3) gross negligence; and (4) general unprofessional conduct.

4. On August 28 and 29, 2017, ALJ John E. DeCure, OAH, conducted a hearing about the Accusation. Petitioner Onwumere was present at the hearing. Both petitioners were represented by counsel. On November 1, 2017, ALJ DeCure issued a Proposed Decision finding cause to discipline petitioners' licenses and recommending that the licenses be revoked, that the revocation be stayed, and that petitioners' licenses be placed on probation for seven years, subject to various terms and conditions.

5. On January 24, 2019, the Board issued an Order rejecting the Proposed Decision. On May 2, 2018, the Board issued a Decision After Rejection in which it revoked petitioners' licenses, stayed the revocation, and placed the licenses on probation for seven years subject to terms and conditions. The Decision became effective on June 1, 2018.

The terms for Cedar Pharmacy included requirements to: obey all laws; report to and interview with the Board; cooperate with Board staff; reimburse investigation, enforcement, and monitoring costs; restrict its pharmacy practice to conform with Drug Enforcement Administration (DEA) registration, which prohibits it from dispensing Schedule II, III, IIIIN, IV, and V drugs for three years; keep separate records for controlled substances; and submit quarterly reports detailing the total acquisition and disposition of controlled substances.

The terms for petitioner Onwumere included similar requirements to those of Cedar Pharmacy, as well as requirements to engage in continuing education; not supervise interns, serve as a PIC, or serve as a consultant; not acquire any new

ownership or beneficial interest in a Board-licensed business; and take an ethics course within sixty days of the Decision's effective date.

Petition for Early Termination of Probation

6. On March 17, 2021, petitioners signed and thereafter filed with the Board a Petition for Early Termination of Probation (Petition). Petitioners have not previously applied for termination of probation. Petitioners submitted in support of their Petition a written statement, letters of recommendation, and proof of continuing education. In the Petition, as well as testimony at hearing, petitioner Onwumere explained the events and circumstances that gave rise to the discipline and his rehabilitation efforts.

7. Petitioners have complied with the terms and conditions of Board probation. They have completed three years of the seven-year probationary term, which is scheduled to end on or about June 1, 2025. The Decision required petitioners to pay the Board's costs of investigation and prosecution, which have been paid in full. Petitioner Onwumere completed the required ethics course on August 15, 2019. Additionally, he submitted continuing education certificates totaling 263.75 hours taken from April 3, 2019 through January 27, 2021.

8. Since discipline was imposed, petitioners made numerous changes to address deficiencies and comply with the probationary terms and conditions. Petitioners settled with federal agencies for more than \$500,000 in fines regarding the claims that the pharmacy failed to properly record hundreds of transactions involving controlled substances, failed to maintain complete and accurate records, and failed to follow prescription issuance guidelines. Under the agreement with the DEA, Cedar Pharmacy has dispensed only Schedule II non-narcotic controlled substances, choosing to focus on drugs used in treatment of psychiatric, ophthalmic, and

dermatological diseases. As a result of the changes and discipline, petitioners lost contracts and the pharmacy's prescription volume dropped, which forced staffing changes.

9. Petitioner Onwumere has practiced pharmacy in California for nearly twenty years, half of which has been at Cedar Pharmacy. He accepted responsibility for his previous failure to exercise appropriate due diligence and professional judgment. He also expressed remorse for the disgrace he brought to himself, his family, and the Board. If presented with prescriptions of questionable legitimacy today, he testified that he would handle the situation much differently. He could not recall the specific \$10,000 and \$5,800 transactions from 2012.

10. Cedar Pharmacy operates much differently now than it did prior to implementation of the Board's discipline. The pharmacy works closely with a local vision center to provide prescription eye drops and with dermatologists to provide prescription skin products. The pharmacy also works with the Fresno County Department of Behavioral Health to offer personalized services and free delivery to their clients. The small amount of Schedule II non-narcotics that the pharmacy dispenses (about one percent of its volume) are juvenile prescriptions for attention-deficit/hyperactivity disorder (ADHD).

11. Since being disciplined, petitioner Onwumere partnered with the Central Valley Opioid Safety Coalition to spread awareness about the dangers of opioid abuse. Although he does not dispense opioids at the pharmacy, he counsels patients on the dangers of these drugs and speaks with doctors about the dangers of overprescribing narcotics. Under the probationary terms, petitioner Onwumere no longer serves as the PIC at Cedar Pharmacy; however, he plans to keep the current PIC if the Board grants his Petition. He has donated money to aid a local family with funeral costs in May

2017, as well as making donations to the Make a Wish Foundation and a local Boys and Girls Club.

12. Petitioner Onwumere testified that he is a different man and pharmacist today and will never repeat his prior mistakes. He requests early termination of probation for himself and Cedar Pharmacy because he does not believe that continuing the period of probation furthers the public's interest and safety. If Cedar Pharmacy is released from probationary restrictions, it will begin a drug collection site to take back prescription medications and prevent medication abuse.

Letters of Recommendation

13. Pursuant to Business and Professions Code section 4309, subdivision (b),¹ petitioner submitted 11 letters of recommendation, all of which were verified. Two of the letters were from licensed pharmacists with personal knowledge of the disciplinary penalties imposed upon petitioners. These authors expressed that petitioner

¹ Business and Professions Code section 4309, subdivision (b), provides:

The petition shall state any facts required by the Board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

Onwumere was an honest person who was very remorseful for his mistakes and dedicated to community service.

- a. Thomas Benham, RPh, serves as the PIC for Cedar Pharmacy. He wrote that petitioner Onwumere has diligently served his community and puts their needs above profit.
- b. Don Ugwu, PharmD, has known petitioner Onwumere for about six or seven years. He wrote that petitioner Onwumere is deeply remorseful for his mistakes. As evidence of rehabilitation, he states that petitioner Onwumere voluntarily stopped filling controlled narcotics prescriptions and has worked to educate others through the Central Valley Opioid Safety Coalition.

14. The remaining nine letters are from private citizens. These authors wrote about the professional and personal service offered by Cedar Pharmacy and petitioner Onwumere's upstanding character and integrity. One author, who has known petitioner Onwumere for ten years wrote: "Peter is an amazing guy and is simply the best independent Specialty Owner that I have encountered in my 20-year history in the biomedical and pharmaceutical industries."

Analysis

15. Petitioners have completed three of the seven years of Board probation. As of June 1, 2021, petitioners are no longer prohibited by the terms of probation from dispensing of Schedule II, III, IIIN, IV, and V drugs. In the nearly ten years since the investigation began, Cedar Pharmacy has put new processes in place to ensure public safety, along with hiring a new PIC. Petitioners provided compelling evidence of

Cedar Pharmacy's compliance with probationary terms and conditions. Furthermore, allowing the pharmacy to host a drug collection site would provide a service to the local community.

16. Petitioner Onwumere did not demonstrate sufficient rehabilitation to justify a reduction in the penalty the Board imposed. His testimony about the high-volume orders he filled in February 2012 was less than forthcoming. Based on the severity of the underlying conduct, petitioner Onwumere will continue to benefit from Board oversight and Cedar Pharmacy will continue to benefit from its existing PIC. This oversight during the remaining term of his probation, in which he may dispense Schedule II, III, IIIN, IV, and V drugs, will help him develop as a pharmacist. Additionally, the remaining term allows him to show that he is able to comply with the probationary terms requiring him to report any controlled substances he dispenses and maintain a separate file of all records pertaining to the acquisition or disposition of all controlled substances he personally dispenses.

17. The allegations against petitioners were serious and posed a potential harm to the public. When all the evidence is considered, no further public interest will be served by continuing Cedar Pharmacy's probation. The pharmacy can operate without restrictions and without harm to the public. Petitioner Onwumere has not yet demonstrated that he is safe to practice without all the probationary restrictions and thus his probation will continue.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a license, including early termination of probation, the burden at all times is on the petitioner to establish rehabilitation.

(See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091–1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Business and Professions Code section 4309, subdivision (d), sets forth the following factors for consideration when the Board reviews a petition for early termination of probation:

- (1) All the activities of the petitioner since the disciplinary action was taken.
- (2) The offense for which the petitioner was disciplined.
- (3) The petitioner's activities during the time the license was in good standing.
- (4) The petitioner's documented rehabilitative efforts.
- (5) The petitioner's general reputation for truth and professional ability.

3. When the relevant rehabilitation criteria set forth in Business and Professions Code section 4309, subdivision (d), are considered, Cedar Pharmacy established that it would be consistent with the public health, safety, and welfare to terminate its probation. Petitioner Onwumere has not established under the rehabilitation criteria that it would consistent with the public health, safety, and welfare to terminate his probation early.

ORDER

1. The petition for early termination of probation of Cedar Pharmacy and Medical Supplies, Inc., Pharmacy License No. PHY 50262, is GRANTED.

2. The petition for early termination of probation of Peter Nnamdi Onwumere, Pharmacist License No. RPH 53590, is DENIED.

This Decision shall become effective at 5:00 p.m. on November 24, 2021.

It is so ORDERED on October 25, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

CEDAR PHARMACY AND MEDICAL
SUPPLIES, INC., Peter Nnamdi Onwumere,
President and Pharmacist-In-Charge
Pharmacy License No. 50262

and

PETER NNAMDI ONWUMERE,
Pharmacist License No. RPH 53590,

Respondents.

Case No. 5488

OAH No. 2016090163

DECISION AFTER REJECTION

Administrative Law Judge John DeCure issued a Proposed Decision in this matter on November 1, 2017. Pursuant to Government Code section 11517, subdivision (c), by order dated January 24, 2018, the California State Board of Pharmacy (Board) rejected the Proposed Decision of the Administrative Law Judge.

In its Order rejecting the Proposed Decision, the Board expressed its particular interest in arguments as to whether, in order to protect the public, the board's model disciplinary terms from its Disciplinary Guidelines should be imposed. (Disciplinary Guidelines, rev. 10/2007.) In particular, the Board sought argument as to whether to apply model terms of probation for pharmacists, including the model text of Standard Condition 7, as well as model terms of probation for pharmacies, including Standard Conditions 1, 3, and 11. (See Disciplinary Guidelines, pp. 23-42, 83-88).

The parties waived ordering the transcript. The parties both timely provided written argument as to the matters raised by the Board.

Having now reviewed and considered the Proposed Decision, the administrative record, exhibits, and written arguments, the Board now issues the following Decision:

A. Except as specified herein, the Board adopts the introduction, Factual Findings and Legal Conclusions of the Proposed Decision. Such provisions are incorporated into this Decision and Order by reference.

B. Paragraph 13 of the Proposed Decision's Legal Conclusions heading *Discipline*, is modified to read:

13. a. As provided in section 4001.1 of the Business and Professions Code, "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." Pharmacy Law also requires that public protection must take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence. (Bus. & Prof. Code, § 4313.)

b. Weighing the causes for discipline proven by the Board, and the mitigation and rehabilitation presented by respondents as set forth in Findings 19 through 24 and 26 through 28, respondents committed serious misconduct due to the volume of false prescriptions that were wrongly verified and issued. Respondent's culpability was mitigated, however, by his insight into his misconduct, his willingness to take responsibility, his cooperation with the DEA and the Board, and his efforts to rehabilitate himself and to significantly reshape his pharmacy's practices. In sum, he appears to be a good candidate for probation.

c. In considering the appropriate terms of probation, the Board has considered all factors, but determines that it is appropriate to use its model terms of probation. Both parties agree that model terms are appropriate, except that the parties disagree as to whether Respondent Onwumere may continue to act as Pharmacist-In-Charge at Respondent Cedar Pharmacy. While he may retain his ownership interest in Cedar Pharmacy, Respondent Onwumere as a pharmacist, has not established sufficient rehabilitation to be permitted to continue to act as Pharmacist-in-Charge at Cedar Pharmacy. His misconduct as a pharmacist allowed illegitimate controlled substances to be dispensed through the pharmacy despite numerous indications that the prescriptions were fraudulent. There was no evidence that he acted with the necessary fundamental diligence. Terms restricting the practice of respondents to DEA restrictions on the pharmacy are also included because they reflect a reasonable method to protect the public. A standard term that requires an assessment that no longer exists, the Pharmacy Self-Assessment Mechanism, is not included.

ORDER

A. Except as modified above in Paragraph A, the Board hereby adopts the Proposed Decision's introduction, Factual Findings, and Legal Conclusions as its own in this matter.

B. Pharmacy Permit Number PHY 50262, issued to Cedar Pharmacy and Medical Supplies, Inc., and its President and Pharmacist-in-Charge, Peter Nnamdi Onwumere, is revoked;

the revocation is, however, stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. Obey All Laws

Respondent owner shall obey all state and federal laws and regulations. Respondent owner shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence: a) 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; b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; c) a conviction of any crime; d) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent owner 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 owner 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.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent owner 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.

4. Cooperate with Board Staff

Respondent owner 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.

5. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent owner and respondent Onwumere shall pay to the board its costs of investigation and prosecution in the amount of \$32,632. Respondent owner shall make said payments on a payment plan as approved by the board. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by either respondent shall not relieve them of their responsibility to reimburse the board its costs of investigation and prosecution.

6. Probation Monitoring Costs

Respondent owner 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.

7. Status of License

Respondent owner shall, at all times while on probation, maintain current licensure with the board. If respondent owner submits an application to the board, and the application is approved, for a change of location, change of permit or change of ownership, the board shall retain continuing jurisdiction over the license, and the respondent shall remain on probation as determined by the board. Failure to maintain current licensure 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.

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent owner discontinue business, respondent owner may tender the premises 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.

Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and renewal license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent owner shall further submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. Respondent owner shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients

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

Respondent owner may not apply for any new licensure from the board for three (3) years from the effective date of the surrender. Respondent owner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board. Respondent owner further stipulates that she shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

9. Notice to Employees

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

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

10. Owners and Officers: Knowledge of the Law

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

11. Posted Notice of Probation

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

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

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

12. Restricted Practice

Respondent's practice of pharmacy shall be restricted to conform to Cedar Pharmacy's current DEA registration, which prohibits it from dispensing Schedule II, III, IIN, IV, and V drugs, in order to eliminate the possibility of filling prescriptions involving the illicit diversion of controlled substances. (Respondent may continue filling Schedule II, non-narcotic (IIN) controlled substances.) These restrictions shall remain in place for the first three years of probation. Respondent shall submit proof satisfactory to the board of compliance with this term of probation.

13. Separate File of Records

Respondent owner shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

14. Report of Controlled Substances

Respondent owner shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent owner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent owner shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

15. Violation of Probation

If a respondent owner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent license, and probation shall be automatically 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 owner violates probation in any respect, the board, after giving respondent owner 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.

16. Completion of Probation

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

C. Pharmacist License Number RPH 53590, issued to respondent Peter Nnamdi Onwumere, is revoked; the revocation is, however, stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. Obey All Laws

Respondent Onwumere 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: a) 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; b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; c) a conviction of any crime; or d) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's 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 any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent Onwumere 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.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent Onwumere 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 at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent Onwumere 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.

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent Onwumere shall notify all present and prospective employers of the decision in case number 5488 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

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 5488, 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 5488 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 her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in case number 5488 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.

7. No Supervision of Interns, Serving as Pharmacist-In-Charge (PIC), or Serving as Consultant, Except as Otherwise Specified

During the period of probation, respondent Onwumere 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 except as otherwise specified this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent Onwumere and respondent Pharmacy shall pay to the board its costs of investigation and prosecution in the amount of \$32,632. It is within the board's discretion to establish a reasonable monthly or quarterly repayment plan with respondents. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondent Onwumere 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.

10. Status of License

Respondent Onwumere 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.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent Onwumere 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.

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

Respondent Onwumere 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.

13. Tolling of Probation

Except during periods of suspension, respondent Onwumere shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of 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 number of 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 for at least the minimum number of hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least minimum hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Restricted Practice

Respondent's practice of pharmacy shall be restricted to consistent with Cedar Pharmacy's current DEA registration, which prohibits it from dispensing Schedule II, III, IIN, IV, and V drugs, in order to eliminate the possibility of filling prescriptions involving the illicit diversion of controlled substances. (Respondent may continue filling Schedule II, non-narcotic (IIN) controlled substances.) These restrictions shall remain in place for the first three years of probation. Respondent shall submit proof satisfactory to the board of compliance with this term of probation.

15. No New Ownership of Licensed Premises

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

16. Separate File of Records

Respondent Onwumere shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

17. Report of Controlled Substances

Respondent Onwumere shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

18. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent Onwumere shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation. Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

19. Violation of Probation

If respondent Onwumere 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 Onwumere 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.

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20. Completion of Probation

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

This Decision shall become effective June 1, 2018.

IT IS SO ORDERED on this 2nd day of May, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

CEDAR PHARMACY AND MEDICAL
SUPPLIES, INC., Peter Nnamdi Onwumere,
President and Pharmacist-In-Charge
Pharmacy License No. 50262

and

PETER NNAMDI ONWUMERE,
Pharmacist License No. RPH 53590,

Respondents.

Case No. 5488

OAH No. 2016090163

**ORDER REJECTING PROPOSED DECISION
AND PROPOSING WAIVER OF TRANSCRIPT**

Pursuant to Government Code section 11517, subdivision (c), the Proposed Decision of the Administrative Law Judge in the above-entitled case is rejected. The California State Board of Pharmacy will decide the case upon the record, and upon such written argument as the parties may wish to submit.

The right to argue on any matter is limited to the facts as presented in the record. No new evidence may be submitted. However, the board is especially interested in arguments as to whether, in order to protect the public, the board's model disciplinary terms from its Disciplinary Guidelines should be imposed. (Disciplinary Guidelines, rev. 10/2007.) In particular, the Board is particularly considering whether to apply model terms of probation for pharmacists, including the model text of Standard Condition 7, as well as model terms of probation for pharmacies, including Standard Conditions 1, 3, and 11. (See Disciplinary Guidelines, pp. 23-42, 83-88).

The board believes the issue above may be addressed without a review of the transcript of the hearing held. Unless the parties object in writing, it will be assumed the parties stipulate that the board may decide the case upon the record without including the transcript. The record will also include any written argument as the parties may wish to submit. In the event any party objects to not ordering the transcript, it should file a notice of objection to the stipulation by **January 29, 2018**, with a copy to the other party. The notice of objection may be served on the board at **1625 N. Market Blvd, N219, Sacramento, CA 95834, Attention Susan Cappello, Enforcement Manager.**

If no party objects to the stipulation regarding the transcript, the parties shall have until **February 23, 2018**, to submit written argument.

In the event any party objects to the stipulation, the transcript will be ordered and the parties will be notified of a revised date for submission of such argument when the transcript of the above-mentioned hearing becomes available. In that case, a copy of the record will be provided to you at the time of notification of the final filing date for written argument (the board may require payment of fees to cover the copying and mailing costs of the transcript and exhibits).

IT IS SO ORDERED this 24th day of January 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:
CEDAR PHARMACY AND MEDICAL SUPPLIES,
INC., PETER NNAMDI ONWUMERE,
PRESIDENT/PHARMACIST-IN-CHARGE
Pharmacy Permit No. PHY 50262

Case No. 5488

OAH No. 2016090163

and

PETER NNAMDI ONWUMERE,
Pharmacist License No. RPH 53590

Respondents.

PROPOSED DECISION

John E. DeCure, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 28 and 29, 2017, in Fresno.

Jeffrey Phillips, Deputy Attorney General, represented Virginia K. Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Cedar Pharmacy and Medical Supplies, Inc. (respondent pharmacy/ Cedar Pharmacy), and its president and pharmacist-in-charge (PIC), Peter Nnamdi Onwumere (respondent), who was present during the hearing, were represented by Ivan Petrzelka, Attorney at Law.

Evidence was taken and argument was heard. The record was held open for respondent to provide further evidence by September 28, 2017. On September 24, 2017, respondent timely submitted: 1) a certified copy of respondent's registration history with the federal Drug Enforcement Administration (DEA), which was marked for identification as Exhibit P; and 2) copies of various prescriptions rejected by respondent, which were marked for identification as Exhibit Q. On October 3, 2017, complainant timely objected to the receipt of these exhibits on relevancy grounds. That objection was overruled, and Exhibits P and Q were received in evidence.

Respondent further requested a protective order sealing: 1) Exhibit Q, which consists of nine pages of handwritten pharmacy prescriptions containing medical and personal information that would be difficult to redact without making the documents illegible; and 2) Exhibit D, which consists of 74 pages of handwritten pharmacy prescriptions containing medical and personal information that would be difficult to redact without making the documents illegible. Complainant did not object. Good cause appearing, respondent's request was granted.

Complainant further requested a protective order sealing Exhibit 24, a California Substances Utilization Review and Evaluation System (CURES) report containing medical and personal information regarding multiple patients. Respondent did not object. Good cause appearing, complainant's request was granted.

Following the hearing the ALJ noted that included in complainant's exhibit binder was an unbound, one-page "Confidential Names Key" containing the names of multiple pharmacy patients. This key was marked as Exhibit 26 for identification. Because the privacy of those patients must be preserved, good cause exists for the ALJ to issue a protective order sealing Exhibit 26.

The record was closed and the matter was submitted on October 5, 2017.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.
2. The Board issued Original Pharmacy Permit Number PHY 50262 to respondent pharmacy, with respondent as president and PIC, on June 1, 2010. The permit will expire on June 1, 2018, unless renewed.
3. The Board issued Original Pharmacist License Number RPH 53590 to respondent on October 7, 2002. The license will expire on November 30, 2019, unless renewed.

General Overview

4. At hearing, respondent did not dispute the facts set forth in the Accusation as a basis for its alleged causes for discipline, and stipulated to their admission as evidence. That factual basis is summarized as follows.

5. The DEA became involved in this matter when the Clovis Police Department made a traffic stop of D.B.,¹ a known drug offender on probation. D.B. was in possession of \$9,000 in cash and 34 prescription receipts, including two from Cedar Pharmacy. A partial receipt, dated February 24, 2012, revealed that 68 prescriptions had been purchased for 23 patients in a single transaction in excess of \$10,000. Another receipt, dated February 25, 2012, revealed that 36 prescriptions had been purchased for 12 patients in a single transaction for \$5,863.70. The prescriptions were primarily for controlled substances and dangerous drugs including: oxycodone, a Schedule II controlled substance and narcotic; hydrocodone, a semi-synthetic narcotic analgesic and Schedule II controlled substance, sold under various brand names as a combination narcotic pain reliever (hydrocodone) and a non-narcotic pain reliever (acetaminophen); and carisoprodol (brand name Soma), a dangerous drug and Schedule IV controlled substance sold as a muscle relaxant that works by relieving pain. These drugs are known for being illicitly re-sold on the street and abused. From this information, the DEA identified Cedar Pharmacy as having a high volume of controlled drug purchases.

6. The DEA alerted the Board of this activity, and the Board assigned Karla Retherford-Parreira, a Board Inspector for six years and a licensed California pharmacist since 1991, to coordinate with the DEA and investigate Cedar Pharmacy's prescribing practices. Using the two pharmacy receipts police had found in D.B.'s possession, Ms. Retherford-Parreira conducted a 32-patient audit, requesting that respondent provide patient profiles, original hardcopy prescriptions, and responses to a patient questionnaire regarding the 32 patients. Ms. Retherford-Parreira noted that one local physician, Jose Luis Flores, M.D., had been the prescribing doctor on each prescription. Dr. Flores surrendered his medical license April 16, 2014, following a Medical Board of California investigation.

7. Respondent's legal counsel provided the requested documentation to the Board. Ms. Retherford-Parreira reviewed the information and determined that between January 1 and 21, 2013, Cedar Pharmacy had dispensed approximately 12,923 controlled substances. Approximately 25 percent of the prescriptions were written by Dr. Flores, and 96 percent of them were paid for in cash. During this period, 86 percent of the oxycodone, 56 percent of the hydrocodone, and 67 percent of the carisoprodol Cedar Pharmacy dispensed overall came from Dr. Flores's prescriptions. Between January 2011 and December 2012, Cedar Pharmacy realized approximately \$619,000 in profits from sales of these three drugs.

8. The Board further noted that regarding the 32 patients listed on the receipt recovered from D.B., the pharmacy was paid approximately \$47,700 for those prescriptions, dispensing 3,840 units of oxycodone 30 mg, 4,470 units of hydrocodone/APAP 10/325 mg, and 3,660 units of carisoprodol 350 mg. On February 24 and 25, 2012, approximately 78 percent of the 32 patients were first-time customers. Dr. Flores's prescription-pad numbers were issued "in sequence" – i.e., without any apparent gaps which would allow for prescriptions for other patients to have been filled in the ordinary course of business. Cedar Pharmacy assigned corresponding prescription numbers which were also issued "in sequence."

¹ The names of all pharmacy patients are withheld to preserve their privacy rights.

9. In March 2015, the DEA issued a news release announcing that Cedar Pharmacy had agreed to pay \$1 million to settle claims that it failed to properly record hundreds of prescription drug transactions, maintain complete and accurate records, and follow prescription issuance guidelines. During the Board's investigation, respondent's counsel advised the Board that Cedar Pharmacy was making penalty payments for violations of the Controlled Substances Act, and that Cedar Pharmacy expected to have paid \$600,000 in penalties by the end of 2015.

10. The only factual contentions in the Accusation which respondent disputed were the allegations that "as indicated on the patient questionnaires," respondent:

did not remember any of the 32 patients or who dropped off or picked up the prescriptions; did not utilize CURES² data to monitor the patients, did not know the diagnoses of any of the patients, did not keep records of the patients' progress or monitor their pain medication usage and/or pain control, and did not have contact with Dr. Flores.

The Prescriptions

11. Ms. Retherford-Parreira testified at the hearing regarding the results of her inspection and also provided expert testimony regarding the standard of practice for California pharmacists and pharmacies. From her perspective as an experienced pharmacist, the prescriptions in question raised several issues. First, the drugs oxycodone, hydrocodone, and carisoprodol are not usually combined in a single prescription, as was done here many times. Only cancer patients, victims of severe accidents, or patients suffering from severe pain could receive such prescriptions. The standard of practice requires that the pharmacist verify the patient's identity and diagnosis, verify who the prescribing physician is, and establish a relationship with the physician and understanding of the patient's treatment. These steps must be taken to avoid drug abuse, particularly with such powerful controlled substances. At the time these prescriptions were being issued, these three drugs frequently were being abused in the community and were at the center of an "opioid crisis." The three drugs were being combined to produce a "heroin-type effect" for users. Ms. Retherford-Parreira did not see evidence in the pharmacy records that respondent was providing the necessary oversight to ensure the legitimacy of the prescriptions.

² CURES is a database of prescription-drug history information established by the California Department of Justice (DOJ) to enable healthcare providers to access patient controlled substance histories in a timely manner. The CURES database includes information about the drug dispensed, drug quantity and strength, patient name, address, prescriber name, and authorization number including DEA number or prescription number. CURES relies upon information submitted by California doctors and pharmacies, who are required to report to DOJ, within seven days, every schedule II, III and IV drug prescription that is written.

12. Ms. Retherford-Parreira visited Cedar Pharmacy in November 2011 and performed a routine initial inspection. She noted visible bottles of controlled substances, including oxycodone and methadone, on a shelf, and felt they posed a security issue, as they could incite a robbery or theft. The pharmacy had not performed a biannual inventory of its controlled substances on hand, and the pharmacy had yet to provide any data to the CURES program. There was no "perpetual log," which is an ongoing inventory count of controlled substances in stock. Ms. Retherford-Parreira discussed these concerns with respondent.

13. On April 18, 2013, the DEA invited Ms. Retherford-Parreira to assist it with the execution of a search warrant and its investigation. On that day, she opened the Board investigation that led to this matter.

14. Ms. Retherford-Parreira noted multiple "red flags" that should have alerted respondent to closely scrutinize the prescriptions in question. Cedar Pharmacy's prescribing data showed that D.B., a non-patient, had been allowed to pick up multiple patient prescriptions. Although this in itself is not prohibited, a pharmacist must ensure that the prescription is legitimate, and there was no evidence in the records that respondent had done so.

15. Multiple cash payments to purchase such powerful controlled substances also should have raised a "red flag" for respondent, because cash is used as a way to evade insurance tracking, and without medical insurance, a supposed patient may not even exist. D.B. should have been questioned as to why he was picking up multiple patients' prescriptions. Was he working for a group home? Did he provide patient consent forms to make the pick-ups on their behalf? Respondent did not ask these questions. The fact that so many prescriptions were issued by Dr. Flores for the same combination of controlled substances, yet for a variety of patients, also should have raised suspicions. But there was no evidence that respondent had any rapport with Dr. Flores regarding these issues. The unbroken numerical sequence of prescription numbers also was suspicious, as it suggested different patients were nonetheless receiving prescriptions for the same drugs, in succession. This was implausible and should have raised suspicions for respondent that the prescribing was not legitimate.

16. When Ms. Retherford-Parreira questioned respondent about these discrepancies, he told her he knew he was wrong, had learned from his mistake, and used poor judgment. When asked if he remembered D.B., respondent said he did not know D.B., and again admitted he had "made a mistake" in filling the prescriptions. In Ms. Retherford-Parreira's opinion, respondent's inaction represented more than merely poor judgment. Instead, she believed respondent should have been noticing the many signs of illegitimate prescribing this case represented, as it was his duty as a pharmacist to do so. In her opinion, not to do so was grossly negligent.

17. On August 24, 2017, four days before the hearing, Ms. Retherford-Parreira made an unannounced visit to Cedar Pharmacy. She noted a few corrections for discussion with respondent, but otherwise found no violations of pharmacy law. She further noted that respondent had voluntarily restricted his DEA certification to only Schedule II, non-narcotic-

class drugs, making Cedar Pharmacy unable to order any narcotics, including oxycodone, hydrocodone, and carisoprodol. She found none of these narcotic drugs on the premises.

Additional Evidence

18. The evidence established that Cedar Pharmacy filled and dispensed prescriptions, written by Dr. Flores, for 20 patients on February 24, 2012, and for 11 patients on February 25, 2012, for oxycodone, hydrocodone, and carisoprodol. Respondent did not verify that the prescriptions were for a legitimate medical purpose before they were filled.

Respondent's Testimony

19. Respondent described his role in the alleged violations as sometimes involving phone calls to Dr. Flores, wherein if Dr. Flores or his office staff verified a prescription as having come from its office, "that was good enough for me." However, in the Board's questionnaire he completed, respondent stated he did not have any contact with Dr. Flores "other than when the staff of the pharmacy phoned the staff of the physician in question to verify that the physician had prescribed narcotic medications." Respondent had no explanation for why he allowed 32 prescriptions to be presented by a single person to be filled and picked up, except to say "I was stupid." He would ask for a person's identification, namely their driver's license, and that was enough verification. "I did not know at the time I was doing anything wrong," he said of this method. Respondent admitted he had been naïve. Today, he would check for red flags, search within the CURES system to determine whether a patient was drug seeking or "physician shopping," and reject the prescription if he could not verify its legitimacy.

20. Respondent stopped filling all prescriptions from Dr. Flores in January 2013, because by then he was increasingly uncomfortable with the sameness of the prescriptions and the combinations of opioids being prescribed.³ Respondent estimated that previously, he had filled 10 to 15 prescriptions daily from Dr. Flores, but he did not contact Dr. Flores's office when he decided to discontinue filling them. Respondent admitted that the pharmacy's record-keeping was previously filled with deficiencies and an improper lack of notations for controlled-substance prescriptions.

21. When the DEA visited Cedar Pharmacy, respondent was initially confused, but he cooperated with the agency. In January 2015, he signed an agreement between Cedar Pharmacy and the DEA to resolve the DEA's contention that the pharmacy had committed multiple violations of the Controlled Substances Act (CSA), contained in Title 21, United States Code, section 801, et seq. Respondent was fined \$1 million, but \$400,000 was to be forgiven once he had paid \$600,000, which he did within one year of signing the agreement. The

³ Respondent provided over 100 examples of controlled-substance prescriptions Cedar Pharmacy denied from April 2014 through December 2016. The earliest denial occurred on April 19, 2013, the week following the DEA's visit and search of Cedar Pharmacy's premises.

pharmacy was further subject to a three-year "Action Plan" intended to ensure compliance with the CSA. In the event that Cedar Pharmacy committed what the DEA deemed to be a "material violation" of any terms and conditions, the \$400,000 would become due and payable. The Action Plan included, but was not limited to, the following:

- Within 90 days, the pharmacy, its employees, and the PIC shall complete a CSA training program addressing methods to detect controlled substance diversion, and federal law requirements that a pharmacist may not fill a prescription without a legitimate medical purpose.
- After the training program was completed, and within 120 days of the agreement, the pharmacy shall draft and implement internal policies and procedures designed to ensure that the pharmacy only dispenses prescriptions for controlled substances to authorized ultimate users in compliance with state and federal laws, and that all record-keeping obligations under the CSA are met. The pharmacy shall reevaluate its policies and procedures biannually.
- During the first 24 months of the agreement, the pharmacy shall provide for external auditors to conduct at least three unannounced audits to determine whether the pharmacy is in compliance with the Action Plan and the CSA.
- The pharmacy shall conduct a quarterly physical inventory of all controlled substances for at least one year, and conduct a bi-weekly physical count of all oxycodone and hydrocodone products. Any discrepancies shall be reported to the DEA.
- The pharmacy shall keep a log of all DEA 222 Forms,⁴ which shall be initialed by the PIC. The PIC shall complete a monthly certification that all invoices have been received, and shall include dates and drug quantities.
- A pharmacy executive (i.e., respondent as Cedar Pharmacy's president) shall complete a self-evaluation form on a quarterly basis to evaluate the pharmacy's compliance with the Action Plan and the CSA.

⁴ A DEA 222 Form is required whenever Schedule I or II controlled substances are bought, sold or transferred between pharmacies or qualified distributors. DEA 222 Forms are only available through the DEA and errors are not acceptable on the form. Schedule III through V drugs do not require a DEA 222 Form.

- Pharmacy employees shall complete annual training on handling controlled substances, their responsibilities under the CSA, and the pharmacy's related policies and procedures. New hires shall receive such training within 30 days of hire and prior to distributing any controlled substances. The pharmacy shall maintain a training-compliance log including supporting documentation.
- The DEA may enter the pharmacy's facilities at any time during regular operating hours and without notice to verify the pharmacy's compliance with the agreement's terms and conditions.

Respondent fully complied with the Action Plan, which the DEA verified was complete in a letter dated March 8, 2016. As a result, the DEA forgave Cedar Pharmacy's remaining \$400,000 fine and cancelled the debt.

22. Respondent testified that when he agreed upon the Action Plan with the DEA, he reconsidered whether Cedar Pharmacy should handle controlled substances at all, and determined to steer the pharmacy away from filling such prescriptions. He thereafter refocused the pharmacy on providing different services to the community. He found there was a need for service to very ill patients who cannot drive, and hired three delivery drivers to cover a wider area of prescription deliveries. He also initiated discounts for elderly or low-income patients. Respondent found a need among 12 medical groups in the area that practice dermatology, and he stocked a higher inventory of dermatology and skin-care drugs and products for their patients. He issued coupons to be used by skin-care patients to purchase name-brand skin care products. Respondent also forged a relationship with the Fresno County Department of Mental Health Services, which serves pediatric psychological and psychiatric patients including children with Attention Deficit Hyperactivity Disorder. Presently, Cedar Pharmacy fills no pain management prescriptions. Respondent has voluntarily restricted the pharmacy's DEA registration from dispensing Schedule II, III, IIN, IV, and V drugs, in order to eliminate the possibility of filling prescriptions involving the illicit diversion of controlled substances. He has limited the pharmacy's role of filling Schedule II, non-narcotic (IIN) controlled substances to County psychiatric patients only.

Follow-up Pharmacy Audit

23. As evidence to be considered in rehabilitation, respondent arranged for the Pharma Compliance Group (Pharma), the firm that had conducted the final required audit pursuant to the Action Plan, to conduct an additional audit of Cedar Pharmacy prior to hearing.

24. Frank Younker, a Senior Compliance Consultant with Pharma, testified credibly regarding the additional audit, which he conducted on June 22, 2017. Mr. Younker was a DEA investigator, senior investigator, and supervisor in DEA's Compliance and Investigation Unit

from 1985 until 2014. He is very experienced and familiar with DEA regulations, investigations, and enforcement, as well as pharmacy laws and requirements. The audit lasted five hours and was comprehensive, including a review of all the requirements set forth in the Action Plan involving policies, procedures, use of forms, record-keeping, training, inventory, storage of drugs, security, and compliance with state and federal laws. Mr. Younker also conducted a sample physical inventory of the drugs on hand at Cedar Pharmacy.

25. Mr. Younker detailed his findings in a 26-page report, concluding that Cedar Pharmacy and respondent were in full compliance with the law and had maintained the standards, policies, and procedures they had initiated as a part of the Action Plan. In several instances, Cedar Pharmacy exceeded expectations in terms of Action Plan compliance. Mr. Younker noted that in April 2017, respondent pharmacy voluntarily amended its DEA registration, relinquishing the dispensing of Schedule II, III, IIN, IV, and V drugs from its inventory and refusing to fill any prescriptions for drugs in those schedules. Respondent now only handles Schedule IIN in prescriptions he fills for the Fresno County mental patients. Mr. Younker opined that this measure went “above and beyond” what was necessary for the pharmacy to avoid the threat of any illegitimate diversion of controlled substances. Respondent impressed Mr. Younker as being “highly compliant.” In sum, he opined that in the future, respondent posed “close to zero” threat of allowing for the diversion of controlled substances through his dispensing of prescriptions.

Aggravation

26. On June 16, 2014, the Board issued Citation and Fine No. CI 2013 58637 against Cedar Pharmacy for failing to document the transfer of a prescription to another pharmacy, resulting in an unauthorized refill, in violation of California Code of Regulations, title 16, section 1717, subdivision (b). Cedar Pharmacy was ordered to pay a fine of \$250, which was paid on June 27, 2014. On the same date, the Board issued Citation and Fine No. CI 2013 61490 against respondent based on this same transaction and violation. Respondent was ordered to pay a fine of \$250, which was paid on June 27, 2014.

Mitigation, Rehabilitation, and Findings Pertinent to Discipline

27. Sandy Ibarra, a pharmacy technician employed at Cedar Pharmacy since 2000, testified that she also knows respondent personally and considers him to be of high character. Recently a family member she knew at her church passed away suddenly, and the deceased person’s family had little money to bury her. After Ms. Ibarra told respondent about the situation, he anonymously paid the family’s burial expenses, including having the body transported back to Mexico. Ms. Ibarra was astonished by respondent’s generosity, since he did not know the deceased or the family. Respondent has also helped Ms. Ibarra by donating money and items for charitable causes involving her church and her children’s school.

Ms. Ibarra considers respondent to be very good with patients, always taking time to communicate with them. She said respondent is trusted among patients and physicians within the community, and is well-known as “Peter from Cedar.”

28. Respondent submitted evidence, including certificates of completion and monitoring reports from the Accreditation Council for Pharmacy Education, establishing that from January 1, 2015, until August 25, 2017, he completed approximately 88 Continuing Pharmacy Education (CPE) courses from accredited CPE providers.

29. Respondent submitted three character reference letters authored by people who know him. These documents were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).⁵

(a) In a letter signed and dated November 9, 2016, Reed Van Wagenen, D.D.S., wrote that respondent has been “a resource” for his practice and for other healthcare providers in need of specialized pharmacy services. On numerous occasions, respondent has compounded medications that were unavailable elsewhere, and he is known by Dr. Van Wagenen’s colleagues as possessing the “expertise and ability to provide customized compounds for our patients that require unconventional therapy.” Dr. Van Wagenen described respondent as having “the highest ethical and moral standards,” and stated that although respondent has made mistakes in the past, “he has learned from each and every one of them.”

(b) In a letter dated December 7, 2016, Babar Rao, M.D., a Fresno dermatologist, stated that respondent and his staff have provided “outstanding,” “customized” and “comprehensive” service for Dr. Rao’s patients. Respondent’s delivery service assists Dr. Rao’s elderly or infirm patients who cannot commute to Fresno for their medications. Dr. Rao further stated that without Cedar Pharmacy, “there is no doubt in my mind that the Hanford community would suffer” due to a lack of delivery service and having to obtain prescriptions from inferior pharmacies.

(c) In a letter dated December 29, 2016, Stacy Comstock, a Cedar Pharmacy customer whose granddaughter suffers from a debilitating medical condition, described the “literally life-saving” service respondent and his staff have provided in filling her granddaughter’s “demanding needs” for over five years. Respondent has taken the time to discuss with Ms. Comstock various treatment options and has worked hard to secure necessary

⁵ Government Code section 11513, subdivision (d), provides, in pertinent part, that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”

medications. Ms. Comstock was “shocked and disappointed” to learn of the Board’s pending action against respondent, and believed that due to his excellent service on her behalf, his errors were not intentional.

Respondent testified that he informed all three letter-writers of the pending Board action.

Discussion

30. At hearing, complainant argued that opioid abuse is a public health crisis, and therefore, Cedar Pharmacy’s and respondent’s licenses must be revoked. Complainant further argued that the ALJ - and by extension, the Board – must “send a message” by revoking their licenses. Despite the fact the DEA investigation into Cedar Pharmacy’s and respondent’s filling of Dr. Flores’s prescriptions was the catalyst for the Board’s investigation, complainant sought to exclude - as irrelevant - evidence detailing respondent’s subsequent agreement with DEA and his cooperation in fulfilling the Action Plan DEA had crafted.⁶

The purpose of administrative hearings is not punitive. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) The question is whether revocation of respondents’ licenses is the only means of achieving public protection. This is not an easy question because although the violations are serious and repeated, respondent has presented substantial evidence of mitigation and rehabilitation.

31. Fully acknowledging the wrongfulness of past action is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent has taken that step. He presented as a humble witness who did not seek to evade responsibility or blame his staff. He admitted that he did not pay attention and properly engage himself in the decisions to dispense the illegitimate prescriptions written by Dr. Flores. He candidly recognized his inaction as a series of “stupid” blunders founded in his own naiveté. Respondent showed appropriate respect for, and understanding of, the Board’s mission of public protection. He was deeply embarrassed by his misconduct, expressing sincere remorse.

32. A truer indication of rehabilitation is sustained conduct for an extended period of time. (*In Re Menna* (1995) 11 Cal.4th 975, 971.) In this respect, respondent has made many efforts to atone for his misconduct over a four-year period. He cooperated with the DEA during its investigation, and for three subsequent years in fulfilling the terms and conditions of the DEA’s Action Plan. He cooperated with the Board’s investigation. As a result of this case, he changed the way he and his staff scrutinize prescriptions. In an effort to prevent the possibility of his pharmacy processing illegitimate prescriptions for controlled substances, he reshaped the pharmacy’s core business and substantially self-restricted its DEA registration. Mr. Younker, a

⁶ Because the Board must consider evidence of mitigation and rehabilitation in determining discipline, such an exclusion of relevant evidence would not provide the Board with a full record of relevant facts.

long-time former DEA investigator, credibly described this measure of self-restriction as an extraordinary act of compliance. Respondent also appears motivated to improve himself. He has furthered his professional education and training by completing dozens of continuing-education courses.

33. Most recently, a comprehensive new audit by Mr. Younker resulted in a report detailing respondent and Cedar Pharmacy's full compliance, and revealed instances in which respondent showed exceptional compliance. A few days before the hearing, Ms. Retherford-Parreira conducted an unannounced Board inspection of Cedar Pharmacy and found it to be in compliance with Board standards.

34. In arguing for revocation, complainant relied upon the precedential decision *Matter of the Accusation Against Pacifica Pharmacy; Thang Tran* (2013) Board of Pharmacy Precedential Dec. No. 2013-01 (*Pacifica*), a case involving a pharmacist's revocation for failing to determine the legitimate medical purpose of controlled substance prescriptions before dispensing them. However, the *Pacifica* case is distinguishable from this matter. Here, respondent offered substantial, persuasive evidence of mitigation and rehabilitation, whereas by contrast in *Pacifica*, the ALJ noted:

Very little evidence was offered in explanation or mitigation. Slightly more evidence was offered in rehabilitation, but experiencing a difficult family life as a result of stress imposed by disciplinary proceedings, being a good husband and parent, being a good employer, and producing some forms to document contact with a prescriber is not compelling evidence of rehabilitation.

35. The Board has adopted "Disciplinary Guidelines (Rev. 10/2007)" (Guidelines), which sets forth factors to be considered in reaching a decision on a disciplinary action. (Cal. Code Regs., tit. 16, § 1760.) The Guidelines divide the statutory and regulatory provisions pertaining to pharmacists into four categories – Category 1, Category II, Category III, and Category IV – and provides a recommended minimum and maximum discipline for each category.

36. Of the ten statutory violations specified in the Accusation, two allege violation of Health and Safety Code (Code) section 4113, which is a definitional statute and does not give rise to discipline.⁷ Seven are Category II violations, and one is a Category III violation. The Guidelines provide the following regarding these penalties, in pertinent part:

The recommended penalty for a Category II violation is:

Minimum: Revocation; Revocation stayed, three years
probation (five years probation where self-administration or

⁷ The Board's Guidelines correctly exclude section 4113 from the four categories of violations.

diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

The recommended penalty for a Category III violation is:

Minimum: Revocation; Revocation stayed, 90 days actual suspension, three to five years probation (five years probation where self-administration or diversion of controlled substances is involved). All standard terms and conditions shall be included and optional terms and conditions as appropriate.

Maximum: Revocation

37. Section 4300 of the Business and Professions Code provides that the Board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the Board:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence

10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

38. Respondent violated several provisions of the Pharmacy Law by allowing multiple illegitimate controlled substance prescriptions to be dispensed through his pharmacy, despite numerous indications that the prescriptions were fraudulent. There was no evidence that he acted with the fundamental diligence necessary to ensure only valid prescriptions be filled. While there was no evidence that the public or any consumer was harmed by respondent's conduct, the risk associated with a licensed pharmacist distributing illegitimate controlled substances is indisputably high.

39. Respondent has no prior disciplinary record but received two citations in 2014. He cooperated with the DEA and the Board and met every requirement of the DEA's three-year remedial plan, taking all appropriate steps to ensure that his pharmacy recognizes fraudulent prescribing and processes only legitimate prescriptions. Respondent completed over 80 continuing education courses in an effort to better himself as a pharmacist and broaden his scope of knowledge. He voluntarily had his pharmacy undergo a recent compliance audit, conducted by a former DEA investigator, to ensure it was meeting every obligation imposed by state and federal law. He has limited the scope of the pharmacy's practice to altogether exclude dispensing controlled substance prescriptions with a high potential for abuse or fraud. The Board's unannounced inspection – conducted a mere four days before the hearing – established the pharmacy's current compliance. Taken together, four successful in-depth audits and a satisfactory Board inspection indicate a substantial track record of rehabilitation and compliance since the violations occurred. Respondent's character reference letters were strong and supportive. He fully recognized his misconduct and expressed sincere remorse for his actions.

When all the evidence is considered, given the factors identified in Business and Professions Code section 4300, respondent submitted sufficient evidence of rehabilitation to demonstrate that the public health, safety and welfare would be adequately protected if respondent is placed on probation under the terms and conditions set forth below.

Costs

40. The Board incurred enforcement costs, in the form of Attorney General fees, in the amount of \$21,787.50. The Board incurred its own costs for investigation in the amount of \$18,607.75. A portion of these costs were not reasonably incurred as follows.

41. The Attorney General's Matter Time Activity report, which details its costs in increments of one-quarter hour and describes each corresponding task performed, reflects that 58.5 hours of Deputy Attorney General time was billed at a rate of \$170 per hour for "trial preparation." The total cost of this activity is \$9,945. The Board called only one witness at the hearing, Ms. Retherford-Parreira, whose testimony was mostly uncontroversial and hewed closely to the allegations set forth in the Accusation. The hearing lasted two days; at the outset, respondent stipulated on the record to the truth of the vast majority of facts alleged. This was not surprising, as the evidence showed respondent had been seeking to atone for his acts since the DEA first investigated his pharmacy over four years ago. The factual basis the Deputy Attorney General set forth was direct, with little, if any, variation from the facts originally known. In sum, there was no indication that a two-day hearing in an essentially undisputed case would require over seven days of billable trial preparation. A more reasonable amount of preparation would be eight hours per hearing day. Therefore, a reasonable total for Attorney General trial preparation costs is 16 hours, or \$2,720.

42. Three days prior to hearing, the Deputy Attorney General further estimated that he would incur an additional six hours of preparation "up to the commencement of the hearing," totaling \$1,020 in costs. The closeness to the hearing date allows for a reasonable presumption to be made that these costs were also for trial preparation. The Deputy Attorney General did not offer evidence at the hearing that these estimated costs were actually incurred, which provides no basis to determine these costs are reasonable. Also, for the reasons stated in Finding 41, further trial-preparation costs are not reasonable.

43. All other Attorney General costs are reasonable.

44. The Board submitted the costs declarations of two investigators who worked on the matter. Those costs are reasonable, with one exception: Ms. Retherford-Parreira's cost estimate of 41.25 hours for "hearing preparation which included case review and witness preparation with the Attorney General's Office." At a billable rate of \$121 per hour, those costs totaled \$4,991.25; yet their necessity is not self-evident. Although Ms. Retherford-Parreira was present throughout the hearing, she was a passive observer. As noted in Finding 41, the balance of Ms. Retherford-Parreira's testimony was uncontroversial, and it consumed approximately two hours of hearing time. Also notably, the Deputy Attorney General's own documented "witness-related preparation" totaled only one hour of Attorney General billing. Under the

circumstances, it was not reasonable for the Board to bill 41.25 hours to prepare for a two-day hearing, and two hours of mostly undisputed testimony. A more reasonable total for hearing and testimony-related preparation is eight hours, or \$968.

45. Pursuant to Findings 39 through 42, the Attorney General's reasonable costs are reduced to \$18,047.50.

46. Pursuant to Finding 43, the Board's reasonable costs are reduced to \$14,584.50. (These costs, when combined with the Attorney General's reasonable costs, total \$32,632.)

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The practice of pharmacy, like the practice of medicine, is a profession. *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19, 25. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856. The key element of "clear and convincing evidence" is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing so long as there is a "high probability" that the charge is true. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662. The Board met its burden of proving its case by clear and convincing evidence.

Applicable Statutes

2. Business and Professions Code section 4300, subdivision (a), provides that "[e]very license issued may be suspended or revoked."

3. Business and Professions Code section 4021 provides that "[c]ontrolled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

4. Business and Professions Code section 4022 provides:

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

- (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the

order of a _____, "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

5. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

(b) Incompetence.

(c) Gross negligence.

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

[¶] . . . [¶]

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

6. Health and Safety Code section 11153, subdivision (a), states in relevant part:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription

Conclusions

7. Cause exists to discipline respondents' licenses under Business and Professions Code section 4301, subdivision (d), for clearly excessive furnishing of controlled substances without verifying a legitimate medical purpose in violation of subdivision (a) of Section 11153 of the Health and Safety Code, as set forth in Findings 5 through 18.

8. Cause exists to discipline respondents' licenses under Business and Professions Code section 4301, subdivision (j), for violation of a state statute regulating controlled substances or dangerous drugs for clearly excessive furnishing controlled substances, without verifying a legitimate medical purpose, in violation of subdivision (a) of Section 11153 of the Health and Safety Code, as set forth in Findings 5 through 18.

9. Cause exists to discipline respondents' licenses under Business and Professions Code section 4301, subdivision (c), for gross negligence in the clearly excessive furnishing of controlled substances, without verifying a legitimate medical purpose, in violation of subdivision (a) of Section 11153 of the Health and Safety Code, as set forth in Findings 5 through 18. Gross negligence has been defined in California and other jurisdictions as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct." *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777 (internal citations omitted.) Respondents' repeated failures to recognize the multiple signs that the prescriptions from Dr. Flores were fraudulent evidenced a severe neglect of their duties.

10. Cause does not exist to discipline respondents' licenses under Business and Professions Code section 4301, subdivision (b), for incompetence in the clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code, without verifying a legitimate medical purpose, as set forth in Findings 5 through 18. California case law defines "incompetence" as a "general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission." *Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 837-838. (See also *James v. Board. of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109 ["Incompetence generally is defined as a lack of knowledge or ability in the discharge of professional obligations"].) No evidence or testimony was presented to establish respondents acted with incompetence.

11. Cause exists to discipline respondents' licenses under Business and Professions Code section 4301, for general unprofessional conduct, by clearly excessive furnishing of controlled substances, without verifying a legitimate medical purpose, in violation of subdivision (a) of Section 11153 of the Health and Safety Code, as set forth in Findings 5 through 18.

12. Cause does not exist to discipline respondents' licenses under Business and Professions Code section 4113, subdivision (b), for "failure to comply with all state and federal laws and regulations pertaining to the practice of pharmacy," as alleged in the Accusation's Fifth and Tenth causes for discipline. This statute is definitional pertaining to the responsibilities of a pharmacist-in-charge, and does not give rise to causes for discipline.

Discipline

13. Weighing the causes for discipline proven by the Board, and the mitigation and rehabilitation presented by respondents as set forth in Findings 19 through 24 and 26 through 28, respondents committed serious misconduct due to the volume of false prescriptions that were wrongly verified and issued. Respondent's culpability was mitigated, however, by his insight into his misconduct, his willingness to take responsibility, his long-time cooperation with the DEA and the Board, and his substantial efforts to rehabilitate himself and to significantly reshape his pharmacy's practices. In sum, he appears to be a good candidate for probation. The following order will best achieve the purpose of public protection.

ORDER

Pharmacy Permit Number PHY 50262, issued to respondent Cedar Pharmacy and Medical Supplies, Inc., and Pharmacist License Number RPH 53590, issued to respondent Peter Nnamdi Onwumere, are hereby revoked. However, the revocation is stayed and respondents are placed on probation for seven years upon the following terms and conditions:

1. Obey All Laws

Respondents shall obey all state and federal laws and regulations. Respondents shall report any of the following occurrences to the board, in writing, within 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 registered 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.

2. Report to the Board

Respondents 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, respondents 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.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent Onwumere 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.

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, only where applicable, respondent Onwumere shall notify all present and prospective employers of the decision in case number 5059 and the terms, conditions and restrictions imposed on respondents by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent Onwumere undertaking any new employment, in that event only 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 5059, and terms and conditions imposed thereby. It shall be respondent Onwumere's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent Onwumere should work for or become employed by or through a pharmacy employment service, he 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 5059 in advance of respondent Onwumere commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent Onwumere undertaking any new employment by or through a pharmacy employment service, in that event respondent Onwumere shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that

he or she has read the decision in case number 5059 and the terms and conditions imposed thereby. It shall be respondent Onwumere'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.

7. No Supervision of Interns

During the period of probation, respondent Onwumere shall not supervise any intern pharmacist. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondents shall pay to the board its costs of investigation and prosecution in the amount of \$32,632. It is within the board's discretion to establish a reasonable monthly or quarterly repayment plan with respondents.

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

The filing of bankruptcy by either respondents shall not relieve them of their responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondents 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.

10. Status of Licenses

Respondents shall, at all times while on probation, maintain active, current licenses 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 respondents' licenses expire or are 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 respondents' licenses shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent Onwumere cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent Onwumere 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 Onwumere 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 Onwumere's license history with the board.

Upon acceptance of the surrender, respondent Onwumere shall relinquish his pocket and wall license to the board within 10 days of notification by the board that the surrender is accepted. Respondent Onwumere may not reapply for any license from the board for 3 years from the effective date of the surrender. Respondent Onwumere 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.

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

Respondent Onwumere shall notify the board in writing within 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 Onwumere shall further notify the board in writing within 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.

13. Tolling of Probation

Except during periods of suspension, respondent Onwumere shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of 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 Onwumere must nonetheless comply with all terms and conditions of probation.

Should respondent Onwumere, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for the Board-determined minimum number of hours per calendar month in California, respondent Onwumere 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 Onwumere'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 Onwumere is not practicing as a pharmacist for at least the minimum hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least the minimum hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

If respondents have not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondents, 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 respondents violate probation in any respect, the board, after giving respondents 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 either 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.

15. Pharmacy Self-Assessment Mechanism

Within the first year of probation, respondent Onwumere shall complete the Pharmacist Self-Assessment Mechanism (PSAM) examination provided by the National Association of Boards of Pharmacy (NABP). Respondent Onwumere shall submit a record of completion to the board demonstrating he has completed this examination. Respondent Onwumere shall bear all costs for the examination. Continuing education hours received for this examination shall not be used as part of the required continuing education hours for renewal purposes.

Failure to timely complete the PSAM or submit documentation thereof shall be considered a violation of probation.

Respondent Onwumere shall waive any rights to confidentiality and provide examination results to the board or its designee.

16. Restricted Practice

Respondents' practice of pharmacy shall be restricted to conform to Cedar Pharmacy's current DEA registration, which prohibits it from dispensing Schedule II, III, IIIN, IV, and V drugs, in order to eliminate the possibility of filling prescriptions involving the illicit diversion of controlled substances. (Respondents may continue filling Schedule II, non-narcotic (IIN) controlled substances.) These restrictions shall remain in place for the first three years of probation. Respondents shall submit proof satisfactory to the board of compliance with this term of probation.

17. No New Ownership of Licensed Premises

Respondent Onwumere shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation licensed by the board in addition to, or other than, respondent pharmacy. If respondent Onwumere currently owns or has any legal or beneficial interest in, or serves 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 Onwumere may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

18. Separate File of Records (For pharmacist owners and pharmacists-in-charge)

Respondents shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

19. Report of Controlled Substances (For pharmacist owners and pharmacists-in-charge)

Respondents shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondents shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondents shall report on a quarterly basis or as directed by the board. The report shall be

delivered or mailed to the board no later than 10 days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

20. Ethics Course

Within 60 calendar days of the effective date of this decision, respondent Onwumere shall enroll in a course in ethics, at respondent Onwumere's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent Onwumere shall submit a certificate of completion to the board or its designee within five days after completing the course.

21. Completion of Probation

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

DATED: November 1, 2017

DocuSigned by:
John DeCure
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JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings

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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. 5488

13 **CEDAR PHARMACY AND MEDICAL**
14 **SUPPLIES, INC.**
15 **PETER NNAMDI ONWUMERE,**
16 **PRESIDENT/PHARMACIST-IN-CHARGE**
17 **6767 N. Cedar Avenue**
18 **Fresno, CA 93710**

A C C U S A T I O N

19 **Pharmacy Permit No. PHY 50262**

20 **and**

21 **PETER NNAMDI ONWUMERE**
22 **6767 N. Cedar Avenue**
23 **Fresno, CA 93710**

24 **Pharmacist License No. RPH 53590**

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 ("Board"), Department of Consumer Affairs.
2. On or about June 1, 2010, the Board issued Pharmacy Permit Number PHY 50262 to Cedar Pharmacy and Medical Supplies, Inc. ("Respondent Cedar Pharmacy"), with Peter Nnamdi Onwumere ("Respondent Onwumere") as president and pharmacist-in-charge. The pharmacy

1 permit was in full force and effect at all times relevant to the charges brought herein and will
2 expire on June 1, 2016, unless renewed.

3 3. On or about October 7, 2002, the Board issued Pharmacist License Number RPH
4 53590 to Respondent Onwumere. The pharmacist license was in full force and effect at all times
5 relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

6 **JURISDICTION**

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

9 5. Section 4300 states, in pertinent part:

10 (a) Every license issued may be suspended or revoked.

11 (b) The board shall discipline the holder of any license issued by the
12 board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

15 (3) Suspending his or her right to practice for a period not exceeding one
16 year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper . . .

19 6. Section 4300.1 states:

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

24 7. Section 4301 states, in pertinent part:

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

27 (b) Incompetence

28 (c) Gross Negligence

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

2 ...

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

5 ...

6 (o) Violating or attempting to violate, directly or indirectly, or assisting in
7 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
8 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

9 8. Section 4075 of the Code states:

10 No prescription for a controlled substance transmitted by means of an oral or
11 electronically transmitted order shall be furnished to any person unknown and
unable to properly establish his or her identity. The board may by regulation
12 establish procedures to prevent unauthorized persons from receiving prescription
drugs furnished to a patient or a representative of the patient.

13 9. Section 4113 of the Code states:

14 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
15 compliance with all state and federal laws and regulations pertaining to the practice of
pharmacy.

16 10. Section 4307(a) of the Code states that:

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

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

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

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1 11. Title 21, Code of Federal Regulations, Section 1306.04, subsection (a), states:

2 A prescription for a controlled substance to be effective must be issued for a
3 legitimate medical purpose by an individual practitioner acting in the usual course
4 of his professional practice. The responsibility for the proper prescribing and
5 dispensing of controlled substances is upon the prescribing practitioner, but a
6 corresponding responsibility rests with the pharmacist who fills the prescription. An
7 order purporting to be a prescription issued not in the usual course of professional
8 treatment or in legitimate and authorized research is not a prescription within the
9 meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person
10 knowingly filling such a purported prescription, as well as the person issuing it,
11 shall be subject to the penalties provided for violations of the provisions of law
12 relating to controlled substances.

13 12. Health and Safety Code section 11153, subdivision (a), states, in pertinent part:

14 A prescription for a controlled substance shall only be issued for a
15 legitimate medical purpose by an individual practitioner acting in the usual course of
16 his or her professional practice. The responsibility for the proper prescribing and
17 dispensing of controlled substances is upon the prescribing practitioner, but a
18 corresponding responsibility rests with the pharmacist who fills the prescription . . .

19 13. California Code of Regulations, title 16, section 1761, subdivision (b), states that
20 “[e]ven after conferring with the prescriber, a pharmacist shall not compound or dispense a
21 controlled substance prescription where the pharmacist knows or has objective reason to know
22 that said prescription was not issued for a legitimate medical purpose.”

23 COST RECOVERY

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

28 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

15. Oxycodone is a semisynthetic narcotic analgesic with multiple actions qualitatively
similar to those of morphine. It is a dangerous drug as defined in Business and Professions Code
section 4022, a schedule II controlled substance and narcotic as defined by section 11055,
subdivision (b)(1)(M) of the Health and Safety Code, and a Schedule II controlled substance as
defined by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations.

16. Hydrocodone, also known as hydrocodone bitartrate, is semisynthetic narcotic
analgesic and a Schedule III controlled substance as designated by Health and Safety Code

1 section 11056(e)(4). It is also sold under brand names Vicodin®, Norco®, Lortab®, and Lorcet®
2 that contains a combination of a narcotic pain reliever (hydrocodone) and a non-narcotic pain
3 reliever (acetaminophen).

4 17. Carisoprodol (brand name "Soma") is a dangerous drug within the meaning of
5 Business and Professions Code section 4022 and in 2012 became a Schedule IV controlled
6 substance under 21 Code of Federal Regulations, section 1308.14(c)(6).

7 **STATEMENT OF FACTS**

8 18. On or about April 18, 2013, a Supervising Inspector of the Board and Board Inspector
9 R. P., performed an inspection of Respondent Cedar Pharmacy, accompanied by investigators
10 with the Drug Enforcement Administration ("DEA"). The DEA had previously identified
11 Respondent Cedar Pharmacy as having a high volume of controlled drug purchases. The Board
12 subsequently opened an audit investigation of the Respondent Cedar Pharmacy.

13 19. On or about September 27, 2013, the DEA provided R. P. with copies of two Cedar
14 Pharmacy register receipts, one dated February 24, 2012, and the other dated February 25, 2012.
15 The receipts were obtained by the Clovis Police Department during a traffic stop of D.B., a
16 known drug offender on probation. D.B. was found to be in possession of \$9,000 in cash and 34
17 prescription receipts, including two receipts from Respondent Cedar Pharmacy, identified above.
18 The receipt dated February 24, 2012, was incomplete (it was cut off at the bottom). The partial
19 receipt showed that 68 prescriptions had been purchased for 23 different patients in a single
20 transaction at a cost in excess of \$10,000. The second receipt dated February 25, 2012 showed 36
21 prescriptions for 12 different patients at a cost of \$5,863.70.

22 20. Board Inspector R. P. used the two register receipts from Respondent Cedar
23 Pharmacy to selected 32 patients to perform an audit. On or about October 21, 2013, R. P. sent a
24 letter to Respondent Onwumere, requesting patient profiles, original hardcopy prescriptions, and
25 a patient questionnaire to be filled out for each of the 32 patients identified in the Cedar Pharmacy
26 receipts.

27 21. On or about October 28, 2013, R. P. received the requested documents from
28 Respondent Onwumere's legal representative. The patient profiles did not contain the method of

1 payment.¹ R. P. noted in reviewing the patient profiles that Dr. Flores had prescribed oxycodone
2 30 mg, hydrocodone/APAP 10/325 mg (Norco), and carisoprodol 350 mg (Soma) in combination
3 for all of the patients.

4 22. On or about April 16, 2014, in the disciplinary action entitled "In the Matter of the
5 First Amended Accusation Against: Jose Luis Flores, M. D.", Case No. 08-2012-221342, Dr.
6 Flores surrendered his physician's and surgeon's certificate to the Medical Board of California.

7 23. On or about February 19, 2015, R. P. sent a letter to Respondent Onwumere,
8 requesting complete patient profiles for the 32 patients as well as drug utilization reports for
9 oxycodone 30 mg, hydrocodone/APAP 10/325 mg, and carisoprodol 350 mg for the years 2011
10 through 2014.

11 24. On or about February 26, 2015, R. P. received the requested documents from
12 Respondent Onwumere's legal representative, including a copy of a Memorandum of Agreement
13 between Cedar Pharmacy and the United States of America. Respondent Onwumere's legal
14 representative advised R. P. in a letter dated February 26, 2015 that the pharmacy was in the
15 process of making penalty payments for violations of the Controlled Substances Act, and will
16 have paid a total of \$600,000 by the end of one calendar year.

17 25. On or about March 9, 2015, the Office of the United States Attorney issued a release,
18 reporting that Cedar Pharmacy had agreed to pay \$1 million to settle claims that it failed to
19 properly record hundreds of transactions involving controlled substances, failed to maintain
20 complete and accurate records, and failed to follow prescription issuance guidelines.

21 26. R. P. determined based on her audit of the documentation provided by Respondents
22 Cedar Pharmacy and Onwumere that:

23 a. Between January 1, 2011 and January 21, 2013, the pharmacy had dispensed
24 approximately 12,923 controlled substances. Approximately 25% of the controlled substances
25 were prescribed by Dr. Flores, and approximately 96% of the prescriptions prescribed by Dr.
26 Flores were paid for in cash. Approximately 84% of the oxycodone 30 mg, 56% of the

27 ¹ Board Inspector R. P. subsequently obtained this payment information from Respondent
28 on or about February 26, 2015.

1 hydrocodone/APAP 10/325 mg, and 67% of the carisoprodol 350 mg sold by the pharmacy were
2 prescribed by Dr. Flores.

3 b. Between January 1, 2011 and December 31, 2012, the pharmacy had a combined
4 profit margin for oxycodone 30 mg, hydrocodone/APAP 10/325 mg, and carisoprodol 350 mg of
5 over \$619,000.

6 c. The 32 patients listed on the cash register receipts of February 24, 2012 and February
7 25, 2012, had received a total of approximately 3,840 units of oxycodone 30 mg, 3,660 units of
8 carisoprodol 350 mg, and 4,470 units of hydrocodone/APAP 10/325 mg from the pharmacy. Dr.
9 Flores prescribed all of the prescriptions; all 32 patients received each of the three drugs, and all
10 of the prescriptions were paid for in cash. The pharmacy had been paid approximately
11 \$47,700.46 for the drugs.

12 d. As indicated on the patient questionnaires, Respondent Onwumere did not remember
13 any of the 32 patients or who dropped off or picked up the prescriptions, did not utilize CURES
14 data² to monitor the patients, did not know the diagnoses of any of the patients, did not keep
15 records of the patients' progress or monitor their pain medication usage and/or pain control, and
16 did not have contact with Dr. Flores.

17 e. Dr. Flores' prescription pad numbers were in sequence, and the prescription numbers
18 assigned by the pharmacy were also in sequence.

19 f. Approximately 78% of the 32 patients were first time customers on February 24,
20 2012 and February 25, 2012.

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23 ² The California Department of Justice (DOJ) established a Prescription Drug Monitoring
24 Program, enabling healthcare providers who are registered with the DOJ, to access patient
25 controlled substance histories in a timely manner. The prescription information is submitted to a
26 database known as the Controlled Substance Utilization Review and Evaluation System
27 (CURES). Authorized prescribers and pharmacists can access this information online. A report
28 known as a Patient Activity Report can be reviewed for Schedule II through IV controlled
substances. The purpose of the program is to identify and prevent/deter drug abuse and diversion.
The information enters the database through weekly transmissions by all licensees who dispense
Schedule II through IV controlled substances, as required under Health and Safety Code section
11165, subdivision (d), and Business and Professions Code section 1170.

1 in paragraphs 18 through 26.

2 **SIXTH CAUSE FOR DISCIPLINE**

3 (Clearly Excessive Furnishing of Controlled Substances)

4 32. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301(d),
5 based on the clearly excessive furnishing of controlled substances without verifying a legitimate
6 medical purpose in violation of Health and Safety Code 11153(a), as alleged in paragraphs 18
7 through 26.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 (Violation Of Statute Or Regulation Governing Controlled Substances And Dangerous Drugs)

10 33. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301(j),
11 based on the clearly excessive furnishing of controlled substances without verifying a legitimate
12 medical purpose in violation of Code section 4075, and/or Health and Safety Code 11153(a)
13 and/or Title 21, Code of Federal Regulations, Section 1306.04, subsection (a), as alleged in
14 paragraphs 18 through 26.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 (Gross Negligence and/or Incompetence)

17 34. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301,
18 subsection (b) and/or (c), based on the excessive furnishing of controlled substances, as alleged in
19 paragraphs 18 through 26.

20 **NINTH CAUSE FOR DISCIPLINE**

21 (General Unprofessional Conduct)

22 35. Respondent Cedar Pharmacy is subject to disciplinary action under section 4301, for
23 general unprofessional conduct based on the excessive furnishing of controlled substances, as
24 alleged in paragraphs 18 through 26.

25 **TENTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with State and Federal Laws)

27 36. Respondent Cedar Pharmacy is subject to disciplinary action under section
28 4113, subsection (c) for the failure to comply with all state and federal laws and regulations

1 pertaining to the practice of pharmacy based on the excessive furnishing of controlled substances,
2 as alleged in paragraphs 18 through 26.

3
4 **MATTERS IN AGGRAVATION**

5 37. To determine the degree of discipline to be assessed against Respondents Cedar
6 Pharmacy and Onwumere, if any, Complainant alleges as follows:

7 a. On or about June 16, 2014, the Board issued Citation and Fine No. CI 2013 58637
8 against Respondent Cedar Pharmacy for violating California Code of Regulations, title 16,
9 section 1717, subdivision (e) (no licensee shall participate in any arrangement or agreement
10 whereby prescriptions or prescription medications may be left at, picked up from, accepted by, or
11 delivered to any place not licensed as a retail pharmacy). The Board ordered Respondent to pay a
12 fine of \$250 by July 16, 2014. Respondent paid the citation on or about June 27, 2014.

13 b. On or about June 16, 2014, the Board issued Citation and Fine No. CI 2013 61490
14 against Respondent Onwumere for violating California Code of Regulations, title 16, section
15 1717, subdivision (e) (no licensee shall participate in any arrangement or agreement whereby
16 prescriptions or prescription medications may be left at, picked up from, accepted by, or delivered
17 to any place not licensed as a retail pharmacy). The Board ordered Respondent to pay a fine of
18 \$250 by July 16, 2014. Respondent paid the citation on or about June 27, 2014.

19
20 **OTHER MATTERS**

21 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
22 PHY 50262 issued to Cedar Pharmacy and Medical Supplies, Inc., then Cedar Pharmacy and
23 Medical Supplies, Inc., shall be prohibited from serving as a manger, administrator, owner,
24 member, officer, director, associate, or partner of a licensee for a period not to exceed five years
25 if Pharmacy Permit Number PHY 50262 is placed on probation or until Pharmacy Permit
26 Number PHY 50262 is reinstated, if the permit is revoked.

27 39. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
28 PHY 50262 issued to Cedar Pharmacy and Medical Supplies, Inc., or if discipline is imposed on

1 Pharmacist License No. RPH 53590 issued to Peter Nnamdi Onwumere, for violations during the
2 time that Peter Nnamdi Onwumere acted as a manger, administrator, owner, member, officer,
3 director, associate, or partner and Peter Nnamdi Onwumere had knowledge or knowingly
4 participated in any conduct for which the permit or license was disciplined, then Peter Nnamdi
5 Onwumere shall be prohibited from serving as a manger, administrator, owner, member, officer,
6 director, associate, or partner on a license or permit issued by the Board for a period not to exceed
7 five years if discipline results in probation or until the license or permit is reinstated, if the license
8 or permit is revoked.

9
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Permit Number PHY 50262, issued to Cedar
14 Pharmacy and Medical Supplies, Inc.;
- 15 2. Revoking or suspending Pharmacist License Number RPH 53590, issued to Peter
16 Nnamdi Onwumere;
- 17 3. Prohibiting Cedar Pharmacy and Medical Supplies, Inc from serving as a manager,
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
19 Pharmacy Permit Number PHY 50262 is placed on probation or until Pharmacy Permit Number
20 PHY 50262 is reinstated if the Pharmacy Permit is revoked;
- 21 4. Prohibiting Peter Nnamdi Onwumere from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if either Pharmacy
23 Permit Number PHY 50262 or Pharmacist License Number RPH 53590 is placed on probation;
- 24 5. Prohibiting Peter Nnamdi Onwumere from serving as a manager, administrator, owner,
25 member, officer, director, associate, or partner of a licensee if either Pharmacy Permit Number
26 PHY 50262 or Pharmacist License Number RPH 53590 is revoked, until Pharmacy Permit
27 Number PHY 50262 or Pharmacist License Number RPH 53590 is reinstated;

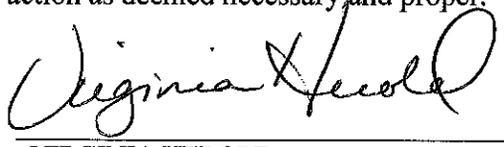
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6 Ordering Cedar Pharmacy and Medical Supplies, Inc. and Peter Nnamdi Onwumere to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 7/30/16



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

SA2015103855