

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

In the Matter of the Accusation Against:

**WALGREENS CORPORATION,
dba WALGREENS #06036
4051 Douglas Boulevard
Granite Bay, CA 95746**

Pharmacy Permit No. PHY 52637

and

**ROBERT PAUL LESIW
4051 Douglas Boulevard
Granite Bay, CA 95746**

Pharmacist License No. RPH 56947

Case No. 5710

OAH No. 2017060179

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
WALGREENS CORPORATION,
DBA WALGREENS #06036, ONLY**

----- Respondents.

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on November 17, 2017.

It is so ORDERED on October 18, 2017.

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



By

Amy Gutierrez, Pharm.D.
Board President

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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. 5710

12 **WALGREENS CORPORATION,**
13 **dba WALGREENS #06036**
14 **4051 Douglas Boulevard**
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15 Pharmacy Permit No. PHY 52637

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
WALGREENS CORPORATION, DBA
WALGREENS #06036, ONLY.

16 and

17 **ROBERT PAUL LESIW**
18 **4051 Douglas Boulevard**
Granite Bay, CA 95646

19 Pharmacist License No. RPH 56947

20 Respondents.

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

24 **PARTIES**

25 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy
26 ("Board"). She brought this action solely in her official capacity and is represented in this matter
27 by Xavier Becerra, Attorney General of the State of California, by Malissa N. Siemantel, Deputy
28 Attorney General.

1 2. Respondent Walgreens Corporation (“Respondent Walgreens”), doing business as
2 Walgreens #06036, is represented in this proceeding by attorney Sweta Patel, whose address is:
3 455 Market Street, Suite 1480, San Francisco, CA 94105.

4 3. On or about June 11, 2002, the Board issued Pharmacy Permit Number PHY 45983 to
5 Walgreens Corporation (“Respondent Walgreens”), doing business as Walgreens #06036. On or
6 about October 22, 2011, Robert Paul Lesiw (“Respondent Lesiw”) became the pharmacist-in-
7 charge until February 4, 2015. Pharmacy Permit Number PHY 45983 expired on December 31,
8 2014, and was canceled on February 4, 2015, pursuant to change in ownership. On or about
9 December 31, 2014, the Board issued Pharmacy Permit Number PHY 52637 to Respondent
10 Walgreens. On or about and between December 23, 2014, and May 24, 2017, Respondent Lesiw
11 was the pharmacist-in-charge. Pharmacy Permit Number PHY 52637 is in full force and effect
12 and will expire on December 1, 2017, unless renewed.

13 JURISDICTION

14 4. Accusation No. 5710 was filed before the Board, and is currently pending against
15 Respondents. The Accusation and all other statutorily required documents were properly served
16 on Respondents on October 10, 2016. Respondents timely filed their Notice of Defense
17 contesting the Accusation.

18 5. A copy of Accusation No. 5710 is attached as exhibit A and incorporated herein by
19 reference.

20 ADVISEMENT AND WAIVERS

21 6. Respondent Walgreens has carefully read, fully discussed with counsel, and
22 understands the charges and allegations in Accusation No. 5710. Respondent Walgreens has also
23 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
24 Settlement and Disciplinary Order.

25 7. Respondent Walgreens is fully aware of its legal rights in this matter, including the
26 right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-
27 examine the witnesses against it; the right to present evidence and to testify on its own behalf; the
28 right to the issuance of subpoenas to compel the attendance of witnesses and the production of

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

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

5 **CULPABILITY**

6 9. Respondent Walgreens understands and agrees that the charges and allegations in
7 Accusation No. 5710, if proven at hearing, constitute cause for imposing discipline upon its
8 Pharmacy Permit.

9 10. For the purpose of resolving Accusation No. 5710 without the expense and
10 uncertainty of further proceedings, Respondent Walgreens agrees that, at hearing, Complainant
11 could establish a factual basis for the charges against it in Accusation No. 5710, and that
12 Respondent Walgreens hereby gives up its right to contest those charges.

13 11. Respondent Walgreens agrees that in any future disciplinary proceeding before the
14 Board the allegations set forth in Accusation No. 5710 shall be deemed admitted.

15 12. Respondent Walgreens agrees that its Pharmacy Permit is subject to discipline and it
16 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

17 **CONTINGENCY**

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

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

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

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

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 52637 issued to Respondent
15 Walgreens Corporation, doing business as Walgreens #06036 is revoked. However, the
16 revocation is stayed and Respondent Walgreens is placed on probation for three (3) years on the
17 following terms and conditions.

18 1. **Obey All Laws**

19 Respondent Walgreens shall obey all state and federal laws and regulations.

20 Respondent Walgreens shall report any of the following occurrences to the Board, in
21 writing, within seventy-two (72) hours of such occurrence:

- 22 an arrest or issuance of a criminal complaint for violation of any provision of the
23 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
24 substances laws
- 25 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
26 criminal complaint, information or indictment
- 27 a conviction of any crime
- 28 discipline, citation, or other administrative action filed by any state or federal agency

1 which involves Respondent Walgreens's pharmacy permit or which is related to the
2 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
3 billing, or charging for any drug, device or controlled substance.

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

5 **2. Report to the Board**

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

14 **3. Interview with the Board**

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

20 **4. Cooperate with Board Staff**

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

24 **5. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, Respondent Walgreens
26 shall pay to the Board its costs of investigation and prosecution in the amount of \$20,000.
27 Respondent Walgreens shall be permitted to pay costs in a payment plan approved by the Board
28 or its designee. There shall be no deviation from this schedule absent prior written approval by

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

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

5 **6. Probation Monitoring Costs**

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

10 **7. Status of License**

11 Respondent Walgreens shall, at all times while on probation, maintain current licensure
12 with the Board. If Respondent Walgreens submits an application to the Board, and the
13 application is approved, for a change of location, change of permit or change of ownership, the
14 Board shall retain continuing jurisdiction over the license, and Respondent Walgreens shall
15 remain on probation as determined by the Board. Failure to maintain current licensure shall be
16 considered a violation of probation.

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

21 **8. License Surrender While on Probation/Suspension**

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

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

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

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

20 Respondent Walgreens further stipulates that it shall reimburse the Board for its costs of
21 investigation and prosecution prior to the acceptance of the surrender.

22 **9. Notice to Employees**

23 Respondent Walgreens shall, upon or before the effective date of this decision, ensure that
24 all employees involved in permit operations are made aware of all the terms and conditions of
25 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
26 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
27 remain posted throughout the probation period. Respondent Walgreens shall ensure that any
28 employees hired or used after the effective date of this decision are made aware of the terms and

1 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
2 Respondent Walgreens shall submit written notification to the Board, within fifteen (15) days of
3 the effective date of this decision, that this term has been satisfied. Failure to submit such
4 notification to the Board shall be considered a violation of probation.

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

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

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

16 **11. Posted Notice of Probation**

17 Respondent Walgreens shall prominently post a probation notice provided by the Board in a
18 place conspicuous and readable to the public. The probation notice shall remain posted during
19 the entire period of probation.

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

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

25 **12. Violation of Probation**

26 If Respondent Walgreens has not complied with any term or condition of probation, the
27 Board shall have continuing jurisdiction over Respondent Walgreens's license, and probation
28 shall be automatically extended until all terms and conditions have been satisfied or the Board has

1 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,
2 to terminate probation, and to impose the penalty that was stayed.

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

11 13. Completion of Probation

12 Upon written notice by the Board or its designee indicating successful completion of
13 probation, Respondent Walgreens's license will be fully restored.

14 14. Remedial Education

15 Within sixty (60) days of the effective date of this Decision, Respondent Walgreens shall
16 submit to the Board or its designee, for prior approval, an appropriate program for all staff
17 pharmacists of remedial education related to pharmacy law. The program of remedial education
18 shall consist of at least four (4) hours for each staff pharmacist, which shall be completed during
19 the initial three (3) years of probation at Respondent Walgreens's own expense. All remedial
20 education shall be in addition to, and shall not be credited toward, continuing education (CE)
21 courses used for license renewal purposes.

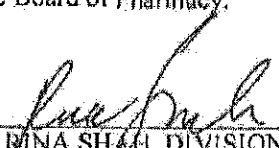
22 Failure to timely submit or complete the approved remedial education shall be considered a
23 violation of probation. The period of probation will be automatically extended until such
24 remedial education is successfully completed and written proof, in a form acceptable to the
25 Board, is provided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

26 Following the completion of each course, the Board or its designee may require Respondent
27 Walgreens's staff pharmacists, at Respondent Walgreens's own expense, to take an approved
28 examination to test Respondent Walgreens's staff pharmacists' knowledge of the course. If all

1 staff pharmacists for Respondent Walgreens do not achieve a passing score on the examination,
2 this failure shall be considered a violation of probation. Any such examination failure shall
3 require staff pharmacists for Respondent Walgreens to take another course approved by the Board
4 in the same subject area.

5 ACCEPTANCE

6 I, Rina Shah, the Division Vice President, Pharmacy Operations, of Walgreens Corporation,
7 have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with Respondent Walgreens's attorney, Sweta Patel. I, on behalf of Walgreens
9 Corporation, doing business as Walgreens #06036, understand the stipulation and the effect it will
10 have on the Pharmacy Permit. I am authorized to enter into this Stipulated Settlement and
11 Disciplinary Order on behalf of Walgreens Corporation, doing business as Walgreens #06036.
12 Walgreens Corporation, doing business as Walgreens #06036, enters into this Stipulated
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agrees to be
14 bound by the Decision and Order of the Board of Pharmacy.

15
16 DATED: 9/26/2017 
17 RINA SHAH, DIVISION VICE PRESIDENT,
18 PHARMACY OPERATIONS,
19 WALGREENS CORPORATION, DBA
20 WALGREENS #06036
21 Respondent

22 I have read and fully discussed with Respondent Walgreens Corporation, doing business as
23 Walgreens #06036, the terms and conditions and other matters contained in the above Stipulated
24 Settlement and Disciplinary Order. I approve its form and content.

25 DATED: 9/26/17 
26 SWETA PATEL
27 Attorney for Respondent Walgreens Corporation,
28 doing business as Walgreens #06036

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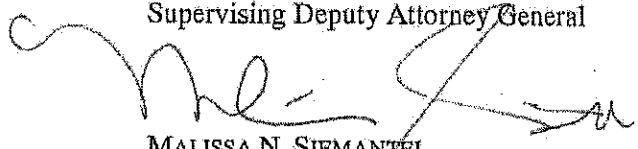
ENDORSEMENT

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

Dated: 9/26/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General



MALISSA N. SIEMANTEL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5710

1 KAMALA D. HARRIS
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2 JANICE K. LACHMAN
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3 MALISSA N. SIEMANTEL
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7 *Attorneys for Complainant*

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A C C U S A T I O N

16 **Pharmacy Permit No. PHY 52637**

17 **and**

18 **ROBERT PAUL LESIW**
19 **4051 Douglas Boulevard**
20 **Granite Bay, CA 95646**

21 **Pharmacist License No. RPH 56947**

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about June 11, 2002, the Board issued Pharmacy Permit Number PHY 45983 to
28 Walgreens Corporation ("Respondent Walgreens"), doing business as Walgreens #06036. On or
about October 22, 2011, Robert Paul Lesiw ("Respondent Lesiw") became the pharmacist-in-
charge until February 4, 2015. Pharmacy Permit Number PHY 45983 expired on December 31,

1 2014, and was canceled on February 4, 2015, pursuant to change in ownership. On or about
2 December 31, 2014, the Board issued Pharmacy Permit Number PHY 52637 to Respondent
3 Walgreens. On or about December 23, 2014, Respondent Lesiw became the pharmacist-in-
4 charge. Pharmacy Permit Number PHY 52637 is in full force and effect and will expire on
5 December 1, 2016, unless renewed.

6 3. On or about April 11, 2005, the Board issued Pharmacist License Number RPH
7 56947 to Respondent Lesiw. The pharmacist license was in full force and effect at all times
8 relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

9 **JURISDICTION/STATUTORY AND REGULATORY PROVISIONS**

10 4. This Accusation is brought before the Board under the authority of the following
11 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
12 indicated.

13 5. Code section 4300 states, in pertinent part:

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

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

17 (1) Suspending judgment.

18 (2) Placing him or her upon probation.

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

21 (4) Revoking his or her license.

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

23 6. Code section 4300.1 states:

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

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7. Code section 4301 states, in pertinent part:

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

....

(b) Incompetence.

(c) Gross negligence.

....

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

....

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

....

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board . . .

8. Code section 4076 states, in pertinent part:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

....

(7) The strength of the drug or drugs dispensed . . .

9. Code section 4081 states, in pertinent part:

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

1 (b) The owner, officer, and partner of any pharmacy, wholesaler, or
2 veterinary food-animal drug retailer shall be jointly responsible, with the
3 pharmacist-in-charge or representative-in-charge, for maintaining the records and
4 inventory described in this section . . .

5 10. Code section 4105 states, in pertinent part:

6 (a) All records or other documentation of the acquisition and disposition
7 of dangerous drugs and dangerous devices by any entity licensed by the board shall
8 be retained on the licensed premises in a readily retrievable form.

9

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

12 (d) Any records that are maintained electronically shall be maintained so
13 that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is
14 not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the
15 designated representative on duty, shall, at all times during which the licensed
16 premises are open for business, be able to produce a hard copy and electronic copy of
17 all records of acquisition or disposition or other drug or dispensing-related records
18 maintained electronically . . .

19 11. Code section 4113, subdivision (c), states that “[t]he pharmacist-in-charge shall be
20 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
21 to the practice of pharmacy.”

22 12. Code section 4156 states that “[a] pharmacy corporation shall not do, or fail to do,
23 any act where doing or failing to do the act would constitute unprofessional conduct under any
24 statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be
25 bound by the laws and regulations that apply to a person licensed under this chapter.”

26 13. Code section 4332 states:

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

14. Health and Safety Code section 11200 states, in pertinent part:

. . . .

(b) No prescription for a Schedule III or IV substance may be refilled
more than five times and in an amount, for all refills of that prescription taken
together, exceeding a 120-day supply . . .

///

1 15. Title 16, California Code of Regulations ("CCR"), section 1707 states, in pertinent
2 part:

3

4 (g) Notwithstanding the requirements of this section, any entity licensed
5 by the board may store the records described in subdivisions (a), (b) and (c) of
6 Section 4105 of the Business and Professions Code in a storage area at the same
address or adjoining the licensed premises without obtaining a waiver from the board
if the following conditions are met:

7

8 (2) The storage area is maintained so that the records are secure and so
9 that the confidentiality of any patient-related information is maintained.

10 16. Title 16, CCR, section 1714 states, in pertinent part:

11

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

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16 (d) Each pharmacist while on duty shall be responsible for the security of
17 the prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices . . .

18 17. Title 16, CCR, section 1715.6 states that "[t]he owner shall report to the Board within
19 thirty (30) days of discovery of any loss of the controlled substances, including their amounts and
20 strengths."

21 18. Title 16, CCR, section 1718 states:

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

24 The controlled substances inventories required by Title 21, CFR, Section
25 1304 shall be available for inspection upon request for at least 3 years after the date of
the inventory.

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19. Title 16, CCR, section 1735.2 states, in pertinent part:

....

(j) Prior to allowing any drug product to be compounded in a pharmacy, the pharmacist-in-charge shall complete a self-assessment for compounding pharmacies developed by the board. (Incorporated by reference is "Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-Assessment" Form 17M-39 Rev. 02/12.) That form contains a first section applicable to all compounding, and a second section applicable to sterile injectable compounding. The first section must be completed by the pharmacist-in-charge before any compounding is performed in the pharmacy. The second section must be completed by the pharmacist-in-charge before any sterile injectable compounding is performed in the pharmacy. The applicable sections of the self-assessment shall subsequently be completed before July 1 of each odd-numbered year, within 30 days of the start of a new pharmacist-in-charge, and within 30 days of the issuance of a new pharmacy license. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

20. Title 16, CCR, section 1735.4 states, in pertinent part:

(a) In addition to the labeling information required under Business and Professions Code section 4076, the label of a compounded drug product shall contain the generic name(s) of the principal active ingredient(s) . . .

COST RECOVERY

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

DRUG CLASSIFICATIONS

22. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

Alprazolam is used to treat anxiety. "Xanax" is a brand of alprazolam.

23. Carafate is a dangerous drug pursuant to Code section 4022 and is used to treat stomach ulcers.

24. Hydrocodone/acetaminophen (APAP) is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a Schedule II controlled

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1 substance pursuant to Title 21, Code of Federal Regulations, section 1308.12.¹

2 Hydrocodone/acetaminophen is also a dangerous drug pursuant to Code section 4022.

3 Hydrocodone/acetaminophen is used to treat pain. “Norco” and “Vicodin” are brands of
4 hydrocodone/acetaminophen.

5 25. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
6 Code section 11055, subdivision (b)(1)(J), and a dangerous drug pursuant to Code section 4022.
7 Hydromorphone is used to treat pain. “Dilaudid” is a brand of hydromorphone.

8 26. Lidocaine is a dangerous drug pursuant to Code section 4022 and is used as a local
9 anesthetic.

10 27. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
11 section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.
12 Oxycodone is used to treat pain. “Percolone” and “Roxicodone” are brands of oxycodone.

13 28. Oxycodone extended release is a Schedule II controlled substance pursuant to Health
14 and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code
15 section 4022. Oxycodone extended release is used to treat pain. “Oxycontin” is a brand of
16 oxycodone extended release.

17 29. Oxycodone/APAP is a Schedule II controlled substance pursuant to Health and Safety
18 Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.
19 Oxycodone/APAP is used to treat pain. “Percocet” is a brand of oxycodone/APAP.

20 30. Promethazine with codeine syrup is a Schedule V controlled substance pursuant to
21 Health and Safety Code section 11058, subdivision (c)(1), and a dangerous drug pursuant to Code
22 section 4022. Promethazine with codeine syrup is used to treat cough. “Phenergan with Codeine
23 Syrup” is a brand of promethazine with codeine syrup.

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26 ¹ Hydrocodone/acetaminophen was rescheduled from a Schedule III to Schedule II
27 controlled substance via the Controlled Substances Act (12 CFR section 1308.12) effective
28 October 6, 2014.

1 **FACTUAL ALLEGATIONS**

2 31. On or about March 26, 2015, the Board received a Report of Theft or Loss of
3 Controlled Substances (DEA 106 form) from Walgreens #06036. The pharmacy reported a loss
4 of 568 ml of hydrocodone-containing liquids and 1,679 tablets of hydrocodone-containing drugs
5 due to employee theft.

6 32. On April 2, 2015, the Board sent Respondent Lesiw ("Lesiw") a letter requesting,
7 among other things, a detailed explanation of the circumstances surrounding the theft. Lesiw sent
8 the Board a written statement, stating that he discovered a bottle of 100 tablets of Norco 10/325
9 mg missing from Walgreens #06036 in November 2014. Drug audits and video surveillance were
10 conducted. In March 2015, video evidence was found of the theft. Employee R. S. (not a
11 licensee of the Board), admitted to the theft and was terminated.

12 **Board Inspection of May 13, 2015 and Subsequent Investigation**

13 33. A Board inspector went to Walgreens #06036 to conduct an inspection and
14 investigate the reported losses of controlled substances from the pharmacy. The inspector met
15 with registered pharmacy technician T. ("TCH T."), who identified herself as the store manager.
16 TCH T. stated that R. S. was employed at Walgreens from April 27, 2012 until March 10, 2015,
17 when he was terminated for stealing drugs, and that the last position he held was front end shift
18 lead. TCH T. explained that the shift lead helps with register issues and overrides, calls patients
19 to pick up prescriptions, and returns drugs to stock that are not picked up by patients. TCH T.
20 stated that R. S. was not hired as a pharmacy employee.

21 34. The inspector observed that the pharmacy had a full door which was secured with a
22 push button combination lock. Throughout the inspection, the inspector observed TCH T. use the
23 combination to enter the pharmacy. The inspector also saw another store employee use the
24 combination to enter the pharmacy several times. TCH T. stated that it was company practice to
25 allow front end employees to enter the pharmacy to assist with various functions and that front
26 end employees did not have any pharmacy training. TCH T. also stated that front end employees
27 were still allowed access to the pharmacy and the drug stock area following the theft and while
28 audits of the losses were still being conducted.

1 35. TCH T. took the inspector to the store warehouse area (Walgreens #06036 stored
2 pharmacy records in this area and in the pharmacy). The inspector observed boxes of prescription
3 records stored on open shelves. The boxes contained original prescriptions that had previously
4 been dispensed as well as original controlled substance prescriptions. The documents contained
5 confidential patient information, including names, dates of birth, addresses, telephone numbers,
6 medication therapy, and/or medical conditions. TCH T. told the inspector that the records should
7 not be stored on the open shelves and showed him a locked metal cabinet where the records were
8 to be kept. The inspector observed that the door to the record storage area was unlocked and that
9 all store employees and vendors had access to this area.

10 36. The inspector reviewed the pharmacy's compounding records and found that they
11 were engaged in compounding from July 2013, through the date of the inspection. The inspector
12 requested the compounding self-assessment; however, neither staff pharmacist E. ("RPH E.") nor
13 TCH T. could find the document. The inspector obtained 13 compounding records dated between
14 January 6, 2015 and May 12, 2015, and had the pharmacy staff print copies of the prescription
15 labels for the 13 products dispensed. The inspector found that three of the 13 compounds were
16 labeled and dispensed without the principal active ingredients or strengths listed on the
17 prescription labels.

18 37. The inspector had RPH E. complete a stock on hand report of all hydrocodone-
19 containing products in the pharmacy. The inspector issued an Inspection Report and left a copy
20 with RPH E. The inspector requested drug audits for all hydrocodone drugs from March 10, 2015
21 to May 13, 2015. The records were to be provided to the inspector within 7 days.

22 38. On or about June 8, 2015, the inspector sent Lesiw a letter requesting drug audits of
23 all hydrocodone drugs from March 10, 2015 to May 13, 2015, and from the first inventory after
24 April 27, 2012 to March 10, 2015.

25 39. On or about July 2, 2015, the inspector sent Lesiw another letter requesting drug
26 audits of all hydrocodone drugs from March 10, 2015 to May 13, 2015, and from the first
27 inventory after April 27, 2012 to March 10, 2015. The inspector also requested copies of certain
28 prescriptions, including any and all documents regarding each instance of refill.

1 40. On or about July 17, 2015, the inspector received various documents which Lesiw
2 sent to the Board, including a written statement from R. S. dated March 10, 2015. R. S. admitted
3 in his statement that he stole controlled substances from the pharmacy, including 109 tablets of
4 Vicodin ES 7.5/300 mg and 3 or 4 bottles of promethazine/codeine liquid. Lesiw also provided
5 copies of prescription documents and records pertaining to each refill. The inspector found in
6 reviewing the prescriptions, refill records, and related dispensing records that controlled
7 substance prescriptions were refilled by Walgreens #06036 beyond the 120 days allowed by law.

8 41. On or about July 22, 2015, the inspector sent Lesiw, Walgreens #06036, and
9 Walgreen Co. a letter, stating that the above audits had been formally requested on three separate
10 occasions, but still had not been provided to the inspector, and that the continued failure to
11 provide the records was preventing him from completing his investigation. The inspector
12 requested that the audits be sent to him no later than three days from receipt of the letter.

13 42. On or about July 23, 2015, RPH E. faxed the inspector the pharmacy's inventory
14 records for March 10, 2015.

15 43. On or about July 27, 2015, Lesiw sent the inspector an email with some of the audit
16 information attached, including a summary of hydrocodone dispensing and acquisition data for
17 Walgreens #06036 for the period of March 10, 2015 to May 13, 2015.

18 44. On or about July 29, 2015, the inspector sent S. S., District Manager for Walgreens,
19 an email, advising him that following the theft of the hydrocodone, the pharmacy continued to
20 incur losses totaling over 5,000 tablets of the drug from March 10, 2015 to May 13, 2015.

21 45. On or about August 24, 2015, the inspector sent Lesiw, S.S., Walgreens #06036,
22 Walgreen Co., and M. M. (Senior Business Analyst, Pharmaceutical Integrity, Walgreen Co.) a
23 letter, stating that the hydrocodone audit from the first inventory after April 27, 2012 to March
24 10, 2015, still had not been provided. The inspector stated further that a copy of the first
25 controlled substance inventory at Walgreens #06036 after April 27, 2012, must be provided
26 immediately along with all acquisition and disposition data from the date of that inventory to the
27 date of the hydrocodone stock on hand counts (the counts conducted on May 13, 2015).

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1 **Board Inspection of August 31, 2015**

2 46. On or about August 31, 2015, the inspector still had not received the audit
3 information, and returned to the pharmacy to conduct a second inspection. The inspector saw a
4 non-pharmacy employee use the combination lock and enter the pharmacy. RPH E. advised the
5 inspector that it was still the practice for front end employees to enter the pharmacy and the drug
6 stock area. Later, the inspector had TCH T. take him to the warehouse area. TCH T. showed the
7 inspector the locked metal cabinet. The inspector observed several boxes stacked on top of the
8 cabinet. TCH T. took one of the boxes down, opened it, and found various "Vaccination
9 Administration Records." The documents contained confidential patient-related information.

10 47. The inspector met with Lesiw and asked him if he had any communications regarding
11 the drug audits he conducted between November 2014 and March 10, 2015. Lesiw provided the
12 inspector with copies of various emails that were exchanged between him and the Walgreens
13 security manager. The inspector found in reviewing the emails that drug losses were discovered
14 at the pharmacy between December 8, 2014 and January 6, 2015, involving hydrocodone-
15 containing drugs. Walgreens #06036 ultimately reported the losses to the Board on March 26,
16 2015; however, the pharmacy failed to report the losses to the Board within 30 days of
17 discovering each loss.

18 48. During the inspection, the inspector obtained copies of the pharmacy's controlled
19 substance inventories for June 9, 2012, June 9, 2013, June 9, 2014, and June 9, 2015. The
20 inspector issued an Inspection Report, requesting all acquisition and disposition records in
21 electronic format for all controlled substances from the beginning of business on June 10, 2012 to
22 the close of business on June 9, 2015.

23 49. On or about September 2, 2015, the inspector received controlled substance
24 dispensing and disposition data for Walgreens #06036 from June 10, 2012 to June 9, 2015.

25 50. The inspector conducted a drug audit using the June 9, 2012 and June 9, 2015,
26 inventories and the acquisition and disposition records. The inspector found, among other things,
27 that Walgreens #06036 had a significant shortage of controlled substances, beyond the drugs and
28 amounts reported as missing by the pharmacy, for the period from June 9, 2012 and June 9, 2015.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**

3 **So that Drugs Were Safely and Properly Secured)**

4 51. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
5 pursuant to Code section 4301, subdivision (o), in that Respondent failed to maintain Walgreens
6 #06036 and its facilities, space, fixtures and/or equipment so that drugs were safely and properly
7 secured, in violation of Title 16, CCR, section 1714, subdivision (b), as follows:

8 a. In or about November 2014, Respondent Lesiw discovered that a bottle of 100 tablets
9 of Norco 10/325 mg was missing from Walgreens #06036. The pharmacy found through
10 subsequent audits and video surveillance that a total of 568 ml of hydrocodone-containing liquids
11 and 1,679 tablets of hydrocodone-containing drugs, Schedule II controlled substances, were
12 missing and that employee R. S., a front end shift lead, had entered the pharmacy on various
13 occasions between November 2014 and March 2015, and had stolen the drugs. The Board found
14 during the inspection of May 13, 2015, that Walgreens #06036 had allowed front end employees,
15 including R. S., to enter the pharmacy and the drug stock area. Further, despite their discovery of
16 the losses of controlled substances, and while the losses were still occurring, Walgreens #06036
17 continued to allow non-pharmacy employees access to the pharmacy and the drug stock area. In
18 fact, non-pharmacy employees were still allowed access to the pharmacy and the drug stock area
19 as of the Board inspections of May 13, 2015, and August 31, 2015.

20 b. The Board determined through the inspections of May 13, 2015 and August 31, 2015,
21 their investigation, and subsequent drug audit that Walgreens #06036 had a significant shortage
22 of controlled substances, beyond the drugs and amounts reported as missing by the pharmacy, for
23 the period from June 9, 2012 and June 9, 2015, as follows.

24

Drug	Amount of Theft/Loss
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169

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Drug	Amount of Theft/Loss
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
Total	10,465

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain an Accurate Current Inventory of All Dangerous Drugs)

52. Respondent Walgreens is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent violated Code sections 4081, subdivisions (a) and (b), and 4105, subdivisions (a), (c), and (d), and Title 16, CCR, section 1718, as follows:

a. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in significant losses of the following controlled substances:

Drug	Amount of Theft/Loss
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
Total	10,465

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1 b. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an
2 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in overages of
3 the following controlled substances:

4 Drug	Amount of Overage
5 Norco 10/325 mg	290
6 oxycodone/APAP 5/325 mg	374
7 Vicodin 5/300 mg	302
Total	966

8 c. Respondent failed to maintain its electronic records of acquisition and disposition so
9 that Respondent Lesiw, the pharmacist-in-charge, and/or the pharmacist on duty were able to
10 produce a hardcopy and electronic copy of the records during business hours.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Report Loss of Controlled Substances)**

13 53. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
14 pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent violated Title 16,
15 CCR, section 1715.6, as follows:

16 a. Respondent failed to report to the Board the loss of the controlled substance Norco;
17 i.e., the bottle of 100 tablets of Norco 10/325 mg, within 30 days of discovery of the loss (in or
18 about November 2014). Further, Respondent failed to report to the Board additional losses of
19 Schedule II controlled substances, hydrocodone-containing liquids and hydrocodone-containing
20 products, until March 26, 2015, when, in fact, those losses occurred between November 2014 and
21 March 2015.

22 b. Respondent failed to report to the Board the loss of the controlled substances Vicodin
23 ES 7.5/300 and promethazine/codeine liquid, which former Walgreens employee R. S. admitted
24 taking in his written statement, as set forth in paragraph 40 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Incompetence)**

3 54. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
4 pursuant to Code section 4301, subdivision (b), in that Respondent committed acts or omissions
5 constituting incompetence, as set forth in paragraph 51 above.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 55. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
9 pursuant to Code section 4301, subdivision (c), in that Respondent committed acts or omissions
10 constituting gross negligence, as set forth in paragraph 51 above.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Subverting an Investigation of the Board)**

13 56. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
14 pursuant to Code section 4301, subdivision (q), in that Respondent engaged in conduct that
15 subverted or attempted to subvert an investigation of the Board, as follows: On and between May
16 13, 2015, and August 24, 2015, the Board's inspector made repeated requests for Respondent's
17 drug audits of all hydrocodone drugs from the first inventory after April 27, 2012 to March 10,
18 2015. Respondent failed, neglected, or refused to produce the records, preventing the inspector
19 from completing his investigation and requiring him to conduct another pharmacy inspection on
20 August 31, 2015.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Storage Area to Ensure Records were Secure)**

3 57. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
4 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,
5 section 1707, subdivision (g)(2), by failing to maintain its records storage area so that the records
6 were secure and so that the confidentiality of any patient-related information was maintained, as
7 follows:

8 a. On or about May 13, 2015, Respondent stored original prescriptions that had
9 previously been dispensed, as well as controlled substance prescriptions, on open shelves in the
10 warehouse area of its store rather than in the locked metal cabinet in the warehouse when, in fact,
11 the documents contained confidential patient information, as set forth in paragraph 35 above.
12 Further, Respondent failed to ensure that the door to the warehouse area was locked, allowing
13 store employees and vendors access to this area.

14 b. On or about August 31, 2015, Respondent stored boxes containing confidential
15 patient information, including Vaccination Administration Records, on top of the locked metal
16 cabinet in the store warehouse area rather than inside the cabinet.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Failure to Complete Compounding Self-Assessment)**

19 58. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
20 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,
21 section 1735.2, subdivision (j), as follows: On or about May 13, 2015, Respondent failed to
22 complete or have available at the pharmacy a compounding self-assessment, as set forth in
23 paragraph 36 above.

24 **NINTH CAUSE FOR DISCIPLINE**

25 **(Failure to Properly Label Compounded Drug Products)**

26 59. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
27 pursuant to Code section 4301, subdivision (o), in that Respondent violated Code section 4076,
28 subdivision (a)(7), and Title 16, CCR, section 1735.4, subdivision (a), as follows: Respondent

1 compounded and dispensed prescriptions with labels that failed to identify the principal active
 2 ingredients and strengths of the compounded prescription preparations, as follows:

Rx Number	Date filled	Compound record Ingredients	Label
857134	01/08/2015	lidocaine viscous Q-dryl Rulox	Magic Mouthwash
872786	03/26/2015	carafate Q-dryl Rulox	Mouth Wash
880141	05/05/2015	Rulox Q-Dryl lidocaine viscous	Magic

TENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Restrictions on Dispensing or Refilling)

60. Respondent Walgreens is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (j), in that Respondent violated Health and Safety Code section 11200, as follows: On and between June 1, 2012 and June 15, 2015, Respondent refilled and dispensed prescriptions for Schedule III and/or IV controlled substances beyond the limits allowed by law in that the prescriptions totaled more than a 120-day supply or more than 5 refills, as follows:

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
709296	zolpidem tartrate	30	6	180	180	30
736224	APAP/hydrocodone	120	6	720	180	120
751643	zolpidem tartrate	30	6	180	180	30
754048	carisoprodol	30	6	180	180	30
768943	zolpidem tartrate	30	6	180	180	30
783327	zolpidem tartrate	30	6	180	180	30
788936	estrogens/methyl testosterone	30	6	180	180	30
831330	alprazolam	90	3	270	270	60

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
730037	clonazepam	90	6	540	180	90
688625	zolpidem tartrate	30	6	180	180	30
690209	clonazepam	90	6	540	180	90
728887	zolpidem tartrate	30	6	180	180	30
732305	clonazepam	30	6	180	180	30
735099	clonazepam	30	6	180	180	30
737527	estrogens/methyl testosterone	30	6	180	180	30
745284	zolpidem tartrate	30	6	180	180	30
798206	Ambien CR	30	6	180	180	30
806829	phentermine hydrochloride	30	6	180	180	30
811086	Androgel	75	6	450	180	75
813685	clonazepam	90	6	540	180	90
719926	zolpidem tartrate	30	6	180	180	30
722652	carisoprodol	30	6	180	180	30
720933	carisoprodol	150	6	900	180	150
753368	zolpidem tartrate	30	6	180	180	30
					Total	1,185

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Pharmacy, Fixtures, and Equipment

So that Drugs Were Safely and Properly Secured)

61. Respondent Lesiw is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent failed to maintain Walgreens #06036 and its facilities, space, fixtures and/or equipment so that drugs were safely and properly secured, in violation of Title 16, CCR, section 1714, subdivision (b), as follows:

a. In or about November 2014, Respondent Lesiw discovered that a bottle of 100 tablets of Norco 10/325 mg was missing from Walgreens #06036. The pharmacy found through

1 subsequent audits and video surveillance that a total of 568 ml of hydrocodone-containing liquids
 2 and 1,679 tablets of hydrocodone-containing drugs, Schedule II controlled substances, were
 3 missing, and that employee R. S., a front end shift lead, had entered the pharmacy on various
 4 occasions between November 2014 and March 2015, and had stolen the drugs. The Board found
 5 during the inspection of May 13, 2015, that Walgreens #06036 had allowed front end employees,
 6 including R. S., to enter the pharmacy and the drug stock area. Further, despite their discovery of
 7 the losses of controlled substances, and while the losses were still occurring, Walgreens #06036
 8 continued to allow non-pharmacy employees access to the pharmacy and the drug stock area. In
 9 fact, non-pharmacy employees were still allowed access to the pharmacy and the drug stock area
 10 as of the Board inspections of May 13, 2015, and August 31, 2015.

11 b. The Board determined through the inspections of May 13, 2015 and August 31, 2015,
 12 their investigation, and subsequent drug audit that Walgreens #06036 had a significant shortage
 13 of controlled substances, beyond the drugs and amounts reported as missing by the pharmacy, for
 14 the period from June 9, 2012 and June 9, 2015, as follows.

Drug	Amount of Theft/Loss
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
Total	10,465

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 24 **TWELFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain an Accurate Current Inventory of All Dangerous Drugs)**

26 62. Respondent Lesiw is subject to disciplinary action for unprofessional conduct
 27 pursuant to Code section 4301, subdivision (o), in that Respondent violated Code sections 4081,
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1 subdivisions (a) and (b), and 4105, subdivisions (a), (c), and (d), and Title 16, CCR, section 1718,
2 as follows:

3 a. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an
4 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in significant
5 losses of the following controlled substances:

6 Drug	Amount of Theft/Loss
7 alprazolam 0.5 mg	1805
8 alprazolam 2 mg	1146
9 hydrocodone/APAP 10/325 mg	916
10 hydrocodone/APAP solution 7.5/325	1658
11 hydrocodone/APAP solution 7.5/500	2636
12 hydromorphone 4 mg	169
13 oxycodone 30 mg	288
14 oxycodone/APAP 10/325 mg	247
15 Oxycontin 80 mg	120
16 promethazine/codeine syrup	1241
17 Vicodin ES 7.5/300 mg	239
18 Total	10,465

15 b. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an
16 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in overages of
17 the following controlled substances:

18 Drug	Amount of Overage
19 Norco 10/325 mg	290
20 oxycodone/APAP 5/325 mg	374
21 Vicodin 5/300 mg	302
22 Total	966

23 c. Respondent failed to maintain Walgreens #06036's electronic records of acquisition
24 and disposition so that he and/or the pharmacist on duty were able to produce a hardcopy and
25 electronic copy of the records during business hours.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Report Loss of Controlled Substances)

63. Respondent Lesiw is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent violated Title 16, CCR, section 1715.6, as follows:

a. Respondent failed to report to the Board the loss of the controlled substance Norco; i.e., the bottle of 100 tablets of Norco 10/325 mg, within 30 days of discovery of the loss (in or about November 2014). Further, Respondent failed to report to the Board additional losses of Schedule II controlled substances, hydrocodone-containing liquids and hydrocodone-containing products, until March 26, 2015, when, in fact, those losses occurred between November 2014 and March 2015.

b. Respondent failed to report to the Board the loss of the controlled substances Vicodin ES 7.5/300 and promethazine/codeine liquid, which former Walgreens employee R. S. admitted taking in his written statement, as set forth in paragraph 40 above.

FOURTEETH CAUSE FOR DISCIPLINE

(Incompetence)

64. Respondent Lesiw is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (b), in that Respondent committed acts or omissions constituting incompetence, as set forth in paragraph 61 above.

FIFTEENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

65. Respondent Lesiw is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (c), in that Respondent committed acts or omissions constituting gross negligence, as set forth in paragraph 61 above.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Storage Area to Ensure Records were Secure)**

3 66. Respondent Lesiw is subject to disciplinary action for unprofessional conduct
4 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,
5 section 1707, subdivision (g)(2), by failing to maintain Walgreens #06036's records storage area
6 so that the records were secure and so that the confidentiality of any patient-related information
7 was maintained, as follows:

8 a. On or about May 13, 2015, Respondent stored original prescriptions that had
9 previously been dispensed, as well as controlled substance prescriptions, on open shelves in the
10 warehouse area of Respondent Walgreen's store rather than in the locked metal cabinet in the
11 warehouse when, in fact, the documents contained confidential patient information, as set forth in
12 paragraph 35 above. Further, Respondent failed to ensure that the door to the warehouse area was
13 locked, allowing store employees and vendors access to this area.

14 b. On or about August 31, 2015, Respondent stored boxes containing confidential
15 patient information, including Vaccination Administration Records, on top of the locked metal
16 cabinet in the store warehouse area rather than inside the cabinet.

17 **SEVENTEENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Complete Compounding Self-Assessment)**

19 67. Respondent Lesiw is subject to disciplinary action for unprofessional conduct
20 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,
21 section 1735.2, subdivision (j), as follows: On or about May 13, 2015, Respondent failed to
22 complete or have available at the pharmacy a compounding self-assessment, as set forth in
23 paragraph 36 above.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Properly Label Compounded Drug Products)**

26 68. Respondent Lesiw is subject to disciplinary action for unprofessional conduct
27 pursuant to Code section 4301, subdivision (o), in that Respondent, as pharmacist-in-charge,
28 failed to ensure compliance with Code section 4076, subdivision (a)(7), and Title 16, CCR,

1 section 1735.4, subdivision (a), in that Respondent allowed for compounded and dispensed
 2 prescriptions with labels that failed to identify the principal active ingredients and strengths of the
 3 compounded prescription preparations, as follows:

Rx Number	Date filled	Compound record Ingredients	Label
857134	01/08/2015	lidocaine viscous Q-dryl Rulox	Magic Mouthwash
872786	03/26/2015	carafate Q-dryl Rulox	Mouth Wash
880141	05/05/2015	Rulox Q-Dryl lidocaine viscous	Magic

NINETEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Restrictions on Dispensing or Refilling)

69. Respondent Lesiw is subject to disciplinary action for unprofessional conduct
 pursuant to Code section 4301, subdivision (j), in that Respondent violated Health and Safety
 Code section 11200, as follows: On and between June 1, 2012 and June 15, 2015, Respondent
 himself, and as pharmacist-in-charge, refilled and dispensed prescriptions for Schedule III and/or
 IV controlled substances beyond the limits allowed by law in that the prescriptions totaled more
 than a 120-day supply or more than 5 refills, as follows:

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
688625	zolpidem tartrate	30	6	180	180	30
690209	clonazepam	90	6	540	180	90
728887	zolpidem tartrate	30	6	180	180	30
732305	Clonazepam	30	6	180	180	30
735099	Clonazepam	30	6	180	180	30
737527	estrogens/methyl testosterone	30	6	180	180	30
745284	zolpidem tartrate	30	6	180	180	30

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
798206	Ambien CR	30	6	180	180	30
806829	phentermine hydrochloride	30	6	180	180	30
811086	Androgel	75	6	450	180	75
813685	Clonazepam	90	6	540	180	90
					Total	495

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 52637, issued to Walgreens Corporation, doing business as Walgreens # 06036;
2. Revoking or suspending Pharmacist License Number RPH 56947, issued to Robert Paul Lesiw;
3. Ordering Walgreens Corporation, doing business as Walgreens # 06036, and Robert Paul Lesiw, 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
4. Taking such other and further action as deemed necessary and proper.

DATED: _____

9/27/16

Virginia Herold

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

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