1 2 3 4 5 6 7 8	BOARD OF	RE THE PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:	Case No. 5323
12	MEDICINE SHOPPE 485 219 East Olive Avenue	ACCUSATION
13	Fresno, California 93728 JEFF LUM	
14	Pharmacist-in-Charge	
15	Pharmacy Permit No. PHY 41280	
16	and	
17 18	JEFF LUM 219 East Olive Avenue Fresno, California 93728	
19	Pharmacist License No. RPH 42790	
20	Respondent.	
21		
22		
23	Complainant alleges:	
24	PARTIES	
25	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
26	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
27		
28		
		Accusation

· \_\_ \_\_ .

2. On or about August 10, 1989, the Board of Pharmacy issued Pharmacist License
 Number RPH 42790 to Jeff Lum (Respondent). The Pharmacist License was in full force and
 effect at all times relevant to the charges brought herein and will expire on May 31, 2017, unless
 renewed.

3. On or about December 19, 1995, the Board of Pharmacy issued Pharmacy Permit
Number PHY 41280 to Medicine Shoppe 485 (Respondent). The Pharmacy Permit was in full
force and effect at all times relevant to the charges brought herein and will expire on December 1,
2016, unless renewed. Jeff Lum is and has been a partner and the Pharmacist in Charge (PIC)
since December 19, 1995.

### **JURISDICTION**

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

Section 4300 of the Code states in pertinent part that every license issued may be
suspended or revoked.

16

6.

10

Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by
operation of law or by order or decision of the board or a court of law, the 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 investigation of, or action or disciplinary
proceeding against, the licensee or to render a decision suspending or revoking the license."

22

28

7. Section 4301 of the Code 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:

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

Accusation

"(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.

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

7

8

8.

1

2

Section 4306.5 of the codes states:

"Unprofessional conduct for a pharmacist may include any of the following:

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

13

9. Section 4036.5 of the code states:

"'Pharmacist-in-charge' means a pharmacist proposed by a pharmacy and approved by the
board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all
state and federal laws and regulations pertaining to the practice of pharmacy."

17

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

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical 18 purpose by an individual practitioner acting in the usual course of his or her professional practice. 19 The responsibility for the proper prescribing and dispensing of controlled substances is upon the 20 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the 21 prescription. Except as authorized by this division, the following are not legal prescriptions: (1) 22 an order purporting to be a prescription which is issued not in the usual course of professional 23 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of 24 controlled substances, which is issued not in the course of professional treatment or as part of an 25 authorized narcotic treatment program, for the purpose of providing the user with controlled 26 substances, sufficient to keep him or her comfortable by maintaining customary use." 27

Accusation

28\_\_\_\_///\_

1 11. Code of Federal Regulations, title 21, section 1306.05, subdivision (f), states: "(f) A prescription may be prepared by the secretary or agent for the signature of a 2 practitioner, but the prescribing practitioner is responsible in case the prescription does not 3 4 conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist, including a pharmacist employed by a central fill pharmacy, who fills a 5 6 prescription not prepared in the form prescribed by DEA regulations," 7

DRUGS

12. Promethazine with Codeine is a Schedule V controlled substance pursuant to Health 8 9 and Safety Code section 11058, subdivision (c), paragraph (1), and a dangerous drug as designated by Business and Professions Code section 4022. 10

#### COST RECOVERY

13. Section 125.3 of the Code states, in pertinent part, that the Board may request the 12 13 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 14 15 enforcement of the case.

16

11

### **BACKGROUND INFORMATION**

17 14. On or about August 21, 2013, Respondents' facility was inspected by an Inspector employed by the Board of Pharmacy. The Inspector found that renewal prescriptions for 18 Promethazine with codeine were sent to prescribers on pre-populated forms that included all 19 necessary information for a prescription including diagnosis and directions for use. 20

21 15. The Inspector reviewed a random sampling of prescriptions from three (3) prescribers who together were responsible for more than 10% of all Promethazine with codeine prescriptions 22 filled by Respondents, and found that all patients had diagnoses of chronic cough, and 69% paid 23 cash for the prescription. Further, out of 33 patients reviewed from one prescriber, there were 38 24 prescriptions for Promethazine with codeine, 95% were paid for in cash, 100% contained 25 26 identical directions for use ("2 teaspoons at bed as needed") 82% had only one prescription on their profile, and 21% had additional prescriptions that were not filled. 27

Accusation

28

1 16. Every prescriber has a prescription pad on which prescriptions are written. The pad 2 contains sheets that are consecutively numbered, and generally the prescriptions are written in 3 that order. The prescription is then assigned a pharmacy number at the pharmacy when the 4 prescription is filled. The pharmacy number is also issued consecutively, indicating that the 5 prescriptions were generally filled in that order.

6 17. On March 30, 2011, four (4) prescriptions were written by the same prescriber, and 7 filled by Respondent. The prescription pad numbers were consecutive, 2128 through 2131. The 8 pharmacy prescription numbers were also consecutive, 4457214 through 4457217. This indicates 9 the prescriptions were issued at or near the same time and then brought to the pharmacy together.

10 18. On August 29, 2011, six (6) prescriptions were written by the same prescriber and
11 filled by Respondent. The prescription pad numbers were sequential between 471 and 481. The
12 pharmacy prescription numbers were also sequential between 4459469 and 4459474. This
13 indicates the prescriptions were issued at or near the same time and then brought to the pharmacy
14 together.

15 19. On September 13, 2011, nine (9) prescriptions were written by the same prescriber,
and filled by Respondent. The prescription pad numbers were sequential between 1373 and 1398.
The pharmacy prescription numbers were also sequential between 4459702 and 4459711. This
indicates the prescriptions were issued at or near the same time and then brought to the pharmacy
together.

20

21

### FIRST CAUSE FOR DISCIPLINE

## (Failure to Exercise Best Professional Judgment)

22 20. Respondents are subject to disciplinary action for unprofessional conduct pursuant to 23 section 4301, and as defined by section 4306.5, subdivision (b), in that Respondents failed to 24 exercise, or ensure that employees of Respondent Medicine Shoppe 485 exercised, their best 25 professional judgment or corresponding responsibility to ensure that all controlled substances are 26 dispensed for a legitimate medical purpose when Respondents and their employees failed to 27 evaluate the totality of the circumstances (information from the patient, physician, or other 28 ///

Accusation

sources) to determine the prescription's legitimate medical purpose. The circumstances are as follows:

21. Between approximately January 1, 2011, and August 22, 2013, Respondents and their 3 employees dispensed 1,487 prescriptions for promethazine with codeine. Respondents and their 4 employees failed to make any reasonable inquiry into the validity of these prescriptions. 5 Specifically, Respondents and their employees failed to question three (3) prescribers' repetitive 6 prescribing habits, the high amount of cash transactions even when insurance was available, and 7 the sequential numbering of prescriptions. Further, Respondents and their employees failed to 8 9 question a lack of diagnosis or sufficiently descriptive diagnosis, or to ask the patient any questions in regards to alleged diagnoses. 10

11

12

1

2

# SECOND CAUSE FOR DISCIPLINE (Clearly Excessive Furnishing of Controlled Substances)

22. Respondents are subject to disciplinary action for unprofessional conduct pursuant to
section 4301, subdivision (d), in that Respondents, and their employees, clearly excessively
furnished controlled substances in violation of Health and Safety Code section 11153, subdivision
(a), by failing to exercise Respondents' corresponding responsibility to ensure that prescriptions
for controlled substances were issued for a legitimate medical purpose during the period January
1, 2011 to August 22, 2013. The circumstances are as set forth in paragraphs 20 and 21, above.

# 19 20

24

25

28

# THIRD CAUSE FOR DISCIPLINE

## (Violation of Statutes Regulating Controlled Substances)

21 23. Respondents are subject to disciplinary action for unprofessional conduct pursuant to
22 section 4301, subdivision (j), for violating, or allowing their employees to violate, statutes
23 regulating controlled substances as set forth in paragraphs 20 through 22, above.

## FOURTH CAUSE FOR DISCIPLINE

#### (Violation of Statutes Governing Pharmacy)

Accusation

2624. Respondents are subject to disciplinary action for unprofessional conduct pursuant to27section 4301, subdivision (o), as set forth in paragraphs 20 through 23, above, and as follows:

25. Respondents and their employees violated the Code of Federal Regulations, title 21, section 1306.05, subdivision (f), by issuing pre-populated prescription forms to prescribers such that Respondents and their employees directed the prescriber as to the appropriate and required elements of a prescription, rather than the prescriber establishing said elements after examination of the patient.

6 7

1

2

3

4

5

26. Respondent Jeff Lum, PIC, violated section 4036.5 by failing to ensure that Respondent Medicine Shoppe 485 and all employees complied with all state and federal laws and regulations pertaining to the practice of pharmacy, as set forth in paragraphs 20 through 25.

9

8

# <u>PRAYER</u>

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

Revoking or suspending Pharmacy Permit Number PHY 41280, issued to Medicine
 Shoppe 485;

14

15

16

17

18

Revoking or suspending Pharmacist License Number RPH 42790, issued to Jeff Lum;
 Ordering Medicine Shoppe 485 Pharmacy Permit Number PHY 41280 and Jeff Lum
 Pharmacist License Number RPH 42790, jointly and severally, 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

19 20

21

22

23

24

25

26

27

28

4.

SA2014118307

11619131.doc

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

2/20/16 DATED:

Accusation

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