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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. 5323

13 **MEDICINE SHOPPE 485**  
219 East Olive Avenue  
Fresno, California 93728  
14 **JEFF LUM**  
Pharmacist-in-Charge  
15 **Pharmacy Permit No. PHY 41280**  
16 **and**  
17 **JEFF LUM**  
219 East Olive Avenue  
18 Fresno, California 93728  
19 **Pharmacist License No. RPH 42790**  
20 Respondent.

**A C C U S A T I O N**

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.

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1           "(j) The violation of any of the statutes of this state, or any other state, or of the United  
2 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.     Section 4306.5 of the codes states:

8           "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:

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

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

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

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

7 **DRUGS**

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

11 **COST RECOVERY**

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

16 **BACKGROUND INFORMATION**

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

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

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

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

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Clearly Excessive Furnishing of Controlled Substances)**

13 22. Respondents are subject to disciplinary action for unprofessional conduct pursuant to  
14 section 4301, subdivision (d), in that Respondents, and their employees, clearly excessively  
15 furnished controlled substances in violation of Health and Safety Code section 11153, subdivision  
16 (a), by failing to exercise Respondents' corresponding responsibility to ensure that prescriptions  
17 for controlled substances were issued for a legitimate medical purpose during the period January  
18 1, 2011 to August 22, 2013. The circumstances are as set forth in paragraphs 20 and 21, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(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.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Violation of Statutes Governing Pharmacy)**

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

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