

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

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In the Matter of the Accusation Against:

Case No. 5470

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**MARC 1 DRUGS, INC. DBA PAYLESS
PHARMACY
14 PIC MARC T. HOANG,
OWNER/PRESIDENT
15 8841 Valley Blvd
Rosemead, CA 91770
16 Original Permit Number PHY 50705**

A C C U S A T I O N

17

and

18

**MARC T. HOANG
8841 Valley Blvd
19 Rosemead, CA 91770
20 Pharmacist License Number RPH 50411**

Respondents.

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Complainant alleges:

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PARTIES

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

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2. On or about September 16, 2011, the Board of Pharmacy issued Original Permit
27 Number PHY 50705 to Marc 1 Drugs, Inc. dba Payless Pharmacy (Respondent Payless
28 Pharmacy). The Original Permit will expire on September 1, 2016, unless renewed. Marc T.

1 Hoang has been the Pharmacist-in-Charge, owner and President of Respondent Payless Pharmacy
2 since September 16, 2011.

3 3. On or about September 4, 1998, the Board of Pharmacy issued Pharmacist License
4 Number RPH 50411 to Marc T. Hoang (Respondent Hoang). The Pharmacist License was in full
5 force and effect at all times relevant to the charges brought herein and will expire on January 31,
6 2018, unless renewed.

7 **JURISDICTION**

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

11 5. Section 4300 of the Code provides, in part, that every license issued by the Board is
12 subject to discipline, including suspension or revocation.

13 6. Section 4302 of the Code states:

14 "The board may deny, suspend, or revoke any license of a corporation where conditions
15 exist in relation to any person holding 10 percent or more of the corporate stock of the
16 corporation, or where conditions exist in relation to any officer or director of the corporation that
17 would constitute grounds for disciplinary action against a licensee."

18 7. Section 4113 of the Code states, in part:

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

21 8. Section 4300.1 of the Code states:

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

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1 exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or
2 under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code
3 who maintains a stock of dangerous drugs or dangerous devices.

4 “(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics
5 provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-
6 in-charge, responsible manager, or designated representative-in-charge, for maintaining the
7 records and inventory described in this section.

8 “(c) The pharmacist-in-charge, responsible manager, or designated representative-in-
9 charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that
10 violate this section and of which the pharmacist-in-charge, responsible manager, or designated
11 representative-in-charge had no knowledge, or in which he or she did not knowingly participate.”

12 12. Section 4105 of the Code states, in part:

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

16 ...

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

19 ...

20 “(f) When requested by an authorized officer of the law or by an authorized representative
21 of the board, the owner, corporate officer, or manager of an entity licensed by the board shall
22 provide the board with the requested records within three business days of the time the request
23 was made.”

24 13. Section 4013 of the Code states, in part:

25 “(a) Any facility licensed by the board shall join the board's e-mail notification list within
26 60 days of obtaining a license or at the time of license renewal.

27 “(b) Any facility licensed by the board shall update its e-mail address with the board's e-
28 mail notification list within 30 days of a change in the facility's e-mail address.

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“(c) An owner of two or more facilities licensed by the board may comply with subdivisions (a) and (b) by subscribing a single e-mail address to the board's e-mail notification list, where the owner maintains an electronic notice system within all of its licensed facilities that, upon receipt of an e-mail notification from the board, immediately transmits electronic notice of the same notification to all of its licensed facilities. If an owner chooses to comply with this section by using such an electronic notice system, the owner shall register the electronic notice system with the board by July 1, 2011, or within 60 days of initial licensure, whichever is later, informing the board of the single e-mail address to be utilized by the owner, describing the electronic notice system, and listing all facilities to which immediate notice will be provided. The owner shall update its e-mail address with the board's e-mail notification list within 30 days of any change in the owner's e-mail address.

“(d) This section shall become operative on July 1, 2010.”

14. Section 4169 of the Code states, in part:

“(a) A person or entity shall not do any of the following:

...

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.”

15. Section 4307, subdivision (a), of the Code states, in pertinent part:

“Any person who has been denied a license or whose license has been revoked or 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, 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 has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

3 (2) Where the license is denied or revoked, the prohibition shall continue until the
4 license is issued or reinstated.”

5 **STATE REGULATORY AUTHORITY**

6 16. California Code of Regulations, title 16, section 1718, states, in part:

7 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
8 Code shall be considered to include complete accountability for all dangerous drugs handled by
9 every licensee enumerated in Sections 4081 and 4332.”

10 **COST RECOVERY**

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

15 **FACTUAL SUMMARY**

16 18. On or about May 31, 2014, the federal Drug Enforcement Administration, Los
17 Angeles, forwarded an email to the Board from an anonymous complainant. The complainant
18 alleged, inter alia, that Respondent Payless Pharmacy billed patients’ health insurance companies
19 for Lidoderm¹ and other brand named prescription medications, but did not dispense the
20 medication to the patients. Instead, Respondent Payless Pharmacy waived copayments of
21 prescription medications that a patient needed, in exchange for billing the Lidoderm and other
22 medications that the patient did not need, to the patient’s insurance company or allowed patients
23 to trade these prescriptions for over-the-counter products at half and sometimes one third the
24 acquisition price of the brand name medication prescribed. This arrangement would enable the
25 pharmacy to keep the money paid by the patients’ insurance for the prescribed medication without
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27 ¹ Lidoderm 5% patch requires a prescription. It is used for relieving pain associated with
28 herpes zoster (shingles). Lidoderm patch is a local anesthetic. It works by stopping nerves from
transmitting painful impulses to the brain.

1 deducting the cost of actually purchasing the medication from its drug wholesaler. The Board
2 initiated an investigation.

3 19. The Board's investigation revealed that Respondent Payless Pharmacy dispensed a
4 significantly larger amount of Lidoderm 5% patches than amounts purchased. Respondent
5 Payless Pharmacy could not account for 6,540 Lidoderm 5% patches (218 boxes) that were
6 purportedly dispensed from November 1, 2012, through January 13, 2015. Respondents' records
7 show that the patches were billed as if they were dispensed; however, Respondents could not
8 produce acquisition records for the purchase of these items.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional conduct - Failure to Provide Records)**

11 20. Respondent Payless Pharmacy and Respondent Hoang are subject to discipline
12 pursuant to Code sections 4301, subdivision (o), on the grounds of unprofessional conduct, in that
13 they violated Code sections 4081, subdivision (a), and 4105, subdivisions (a) and (f), in
14 conjunction with California Code of Regulations, Title 16, Section 1718, by failing to provide all
15 records of sale, acquisition and disposition of dangerous drugs.

16 21. Respondents could not produce acquisition records for the pharmacy's purchase of
17 6,540 Lidoderm 5% patches (218 boxes) that were purportedly dispensed by the pharmacy from
18 November 1, 2012, through January 14, 2015. Complainant refers to, and by this reference
19 incorporates, the allegations set forth above in paragraphs 18 and 19 above, as though set forth in
20 full herein.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional conduct - Failure to Maintain Records)**

23 22. Respondent Payless Pharmacy and Respondent Hoang are subject to discipline
24 pursuant to Code sections 4301, subdivision (o), on the grounds of unprofessional conduct, in that
25 they violated Code section 4169, subdivision (a)(5), by failing to maintain records of the
26 acquisition and disposition of dangerous drugs or dangerous devices for at least three years.

27 23. Respondents could not produce acquisition records for the pharmacy's purchase of
28 6,540 Lidoderm 5% patches (218 boxes) that were purportedly dispensed by the pharmacy from

1 November 1, 2012, through January 14, 2015. Complainant refers to, and by this reference
2 incorporates, the allegations set forth above in paragraphs 18 and 21 above, as though set forth in
3 full herein.

4 **OTHER MATTERS**

5 24. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
6 PHY 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy, Marc 1 Drugs, Inc. shall be
7 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
8 or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on
9 probation or until Pharmacy Permit Number PHY 50705 is reinstated if it is revoked.

10 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
11 PHY 50705 issued by the Board to Marc 1 Drugs, Inc. dba Payless Pharmacy while Marc T.
12 Hoang has been an officer and/or owner and had knowledge of or knowingly participated in any
13 conduct for which the licensee was disciplined, Marc T. Hoang shall be prohibited from serving
14 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
15 for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy
16 Permit Number PHY 50705 is reinstated if it is revoked.

17 **DISCIPLINARY CONSIDERATION**

18 26. On or about April 11, 2014, in a prior action, the Board issued Citation Number 2013
19 60678 to Respondent Hoang for violating Business and Professions Code section 4110,
20 subdivision (a) (operating a pharmacy without a permit issued by the Board), and fined \$1,500.
21 That Citation is now final and is incorporated by reference as if fully set forth.

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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 Original Permit Number PHY 50705, issued to Marc 1 Drugs, Inc. dba Payless Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 50411 issued to Marc T. Hoang;

3. Prohibiting Marc 1 Drugs, Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if Pharmacy Permit Number 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy is revoked;

4. Prohibiting Marc T. Hoang from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50705 is placed on probation or until Pharmacy Permit Number PHY 50705 is reinstated if Pharmacy Permit Number PHY 50705 issued to Marc 1 Drugs, Inc. dba Payless Pharmacy is revoked;

5. Ordering Marc 1 Drugs, Inc. dba Payless Pharmacy and Marc T. Hoang 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;

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

DATED: _____

7/30/16

Virginia Herold

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

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