

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

In the Matter of the Accusation Against:

LANA LIN A.K.A. LANA LIMON
2192 E Rush Avenue
Fresno, CA 93730

Pharmacist License No. RPH 54092

Respondent.

Case No. 3725

OAH No. 2012050745

DECISION AND ORDER

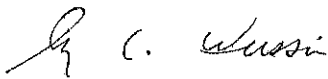
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 18, 2013.

It is so ORDERED on March 19, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard on January 14 and January 15, 2013, before Ann Elizabeth Sarli, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), in Sacramento, California.

Complainant, Virginia Herold, Executive Officer of the California Board of Pharmacy (Board), was represented by Lorrie Yost, Deputy Attorney General.

Lana Limon was represented by Scott J. Harris, Attorney at Law.

Oral and documentary evidence was submitted. The record was closed and the matter submitted for decision on January 15, 2013.

FACTUAL FINDINGS

1. On September 10, 2002, the Board issued Original Pharmacist License Number RHP 54092 to Lana Lin a.k.a. Lana Limon (respondent). The license was in full force and effect at all times relevant to this proceeding.

2. On November 9, 2011, complainant, in her official capacity, made the Accusation and caused it to be filed thereafter. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

Criminal Conviction

3. On July 20, 2009, in the Superior Court, County of Fresno ¹ respondent was convicted on her plea of nolo contendere of a violation of Vehicle Code section 23103, subdivision (a),² pursuant to Vehicle Code section 23105.5³ (Reckless driving with drugs and or alcohol).

4. Respondent was sentenced to serve 180 days in Fresno county jail. The sentence was suspended for two years and she was placed on conditional sentence probation for two years. Respondent was ordered to pay fines and fees and to attend and complete a 12 hour alcohol and drug program. On May 16, 2012, the court granted respondent's petition

¹ Case number MO9911427.

² Vehicle Code section 23013, subdivision (a) provides: "A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving."

³ Vehicle Code section 23103.5, provides in pertinent part:

(a) If the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of an alcoholic beverage or ingestion or administration of a drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of an alcoholic beverage or the ingestion or administration of a drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of an alcoholic beverage or the ingestion or administration of a drug by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of section 23540, 23546, 23550, 23569, 23566 or 23622, as specified in those sections.

[¶...¶]

for dismissal under Penal Code section 1203.4, setting aside and vacating the plea and dismissing the accusatory pleading.

5. Respondent's conviction arose from her driving on December 11, 2008. At 10:33 a.m., respondent was driving on Shaw Avenue to work at Walgreen's Pharmacy in Clovis. She was stopped by Fresno Police after she was observed driving erratically and failing to yield to an emergency vehicle. Officers observed that respondent appeared impaired. She was acting "silly," was laughing and her speech was soft and slurred. Officer M. Roberts was dispatched to complete a drug recognition evaluation. When he approached respondent she was sitting on a cement block. She was talking to officers and was giggling and swaying. She tried to get up and almost fell backwards. When they tried to get her to sit back down, one officer had to bend her knees for her. She was taken to a medical center and a breath alcohol test was administered which showed that respondent had no alcohol in her system. Officer Roberts asked respondent what medications she had taken and she responded that she had taken about 15 milliliters of Dextromethorphan for a cough before she left for work, because she did not want to get her customers sick. She stated she had taken a double dose of Topiramate and Lamotrigine for bipolar disorder, and later she told him she was taking these drugs for her migraines. When she was walked to the patrol car and later to the medical center she "walked in a manner similar to Frankenstein, stiffed legged and with locked knees." When they got to a curb at the medical center, she took an exaggerated step up and over the curb, stepping about 12 inches higher than the step and about 10 inches longer than needed. Her pulse was rapid and she had rigid muscle tone. Her reaction to light was slow. She swayed back and forth one to two inches while leaning against a chair with the back of her legs. She was unable to walk, turn or raise one leg. When she was asked to place her finger to her nose she missed the tip of her nose three times. Respondent's husband arrived at the medical center and Officer Roberts talked with him. Respondent's husband agreed that she did not sound like her usual self when she called him and also agreed with one of the officers who said that respondent reminded him of a six-year-old.

6. Respondent provided a blood sample at the medical center. The toxicology report was prepared by Central Valley Toxicology Inc. It was negative for alcohol and positive for Citalopram, Lamotrigine, Topiramate and Dextromethorphan. The Lamotrigine and Topiramate blood levels were within the effective therapeutic range. The Citalopram was measured at .94 mg/L, while the effective therapeutic range is .02-.20 mg/L. The Dextromethorphan was measured at .83 mg/L, while the effective therapeutic range is .01-.04 mg/L.

7. Citalopram is an antidepressant drug of the selective serotonin reuptake inhibitor (SSRI) class. Lamotrigine and Topiramate are anticonvulsant drugs used in the treatment of epilepsy and bipolar disorder.

8. According to complainant's inspector and expert witness, Richard Iknoian, Pharm D., Dextromethorphan is an over-the-counter cough suppressant derived from Codeine. Codeine is a controlled substance and a narcotic. Dextromethorphan is an altered

form of Codeine, designed to have the effectiveness of codeine without the side effects. A standard dosage, 1-2 teaspoons every 4 to 6 hours, would cause very little side effects and in an adult would result in a concentration of about .03 milliliters (mL) per liter of blood. Respondent's toxicology testing showed .83 mL per liter, a level in the range of 20 times the accepted dosage of Dextromethorphan. This level of Dextromethorphan would result in extreme intoxication beginning with drowsiness, followed by mental confusion, mental impairment and ataxia (loss of the ability to coordinate muscular movement). This level of Dextromethorphan would manifest in the behavior and symptoms the officers observed in respondent; erratic driving, "Frankenstein movements," slurred speech, lack of balance and the other signs of central nervous system depression recorded by the arresting officers. The other medications respondent was taking would not cause the behavior the officers observed at the time of arrest.

9. Dr. Iknoian related that Dextromethorphan is a drug of abuse, and over the counter medications with Dextromethorphan as the sole ingredient, such as some varieties of Robitussin, are consumed in high doses to achieve an altered mental state. Dextromethorphan is not legally classified as a dangerous drug, but the concentration found in respondent's blood serum level was dangerous. It is likely that she took six to eight ounces of a syrupy medication with Dextromethorphan as opposed to the one to two teaspoons she reported she took to the police.

10. There is no question that respondent's criminal conviction was for acts that are substantially related to the qualifications, duties and functions of a pharmacist. Respondent was on her way to work as a pharmacist when she was apprehended. She was too intoxicated to drive and too intoxicated to perform pharmacy duties. She posed a significant risk to the public. Additionally, respondent, as a pharmacist, knew the risks of Dextromethorphan abuse and the danger she would pose to the public and to patients while under the influence of the drug. Nevertheless, she chose to put the public and patients at risk.

Respondent's Defenses to Conviction

11. The Accusation alleges that respondent incurred a criminal conviction for driving while under the influence of excessive amounts of Dextromethorphan, in violation of Business and Professions Code sections 490, subdivision (a.) and 4301, subdivision (1). It is well settled that respondent may not attempt to impeach her criminal conviction by claiming that she did not commit the crime for which he was convicted. (*Arneson vs. Fox* (1980) 28 Cal. 3d 440, 449 ["Regardless of the various motives which may have impelled the [no contest] plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."] The *Arneson* court held: "The nolo conviction stands as conclusive proof of appellant's guilt of the specific offense charged in the indictment. No extrinsic independent evidence thereof need be introduced. Nor is appellant permitted to impeach that conviction. (citing *Matanky v. Board of Medical Examiners* 79 Cal.App.3d 293, at p. 302)." *Id.* at 452.

12. Respondent maintains that she is not trying to impeach her conviction. However, she maintains that she consumed one 15 mL dose of Dextromethorphan around 10:00 p.m. the night before and a 15 mL dose right before she left for work the day of the arrest. She maintains that she did not take any other doses and never took Dextromethorphan previously. She took a long acting Dextromethorphan product because she was going to cough on customers and did not want to take medications in front of customers. She also does not like the taste of alcohol and she picked a product that did not have alcohol. She acknowledges that the recommended dosage may have been less than 15 mL but maintains her intention was not to get high and testified that she did not feel at all impaired when driving to work. Respondent's husband testified that she was at home about 15 minutes before her arrest and she took a dose of Dextromethorphan right before she left for work and the prior evening. It was a four ounce, new bottle and more than half a bottle remained after the evening and the morning doses were taken. Neither respondent nor her husband was credible, especially in light of the uncontroverted evidence of respondent's erratic driving, her condition at the time of apprehension and her blood serum level of Dextromethorphan.

13. Respondent's friend and coworker, Russell Taylor, is a hospital staff pharmacist at Emmanuelle Hospital in Turlock (Emmanuel). He has a doctoral degree in pharmacy and has been licensed as a pharmacist since 1981. He testified that respondent told him recently about her arrest. He was mystified by respondent's blood serum level of Dextromethorphan after she told him she had only consumed 15 mL. He did some research to see what could have caused her blood serum level to be so high. He learned that Dextromethorphan can have interactions with other drugs, which can reduce the metabolism rate of Dextromethorphan. The SSRI inhibitors, such as Citalopram, can interact with Dextromethorphan and reduced the metabolism rate of Dextromethorphan. Also, SSRIs and Dextromethorphan can interact and cause serotonin syndrome which is a set of symptoms that occur when too much serotonin is in the brain and central nervous system and causes over-stimulation of the brain, confusion and lethargy, incoherent speech, rigid muscles and can progress to the point of death. He also testified that there was so much individual variation in the metabolism of Dextromethorphan that there is no correlation between the dosage and blood level. There is also a gene mutation that causes the enzyme that metabolizes Dextromethorphan to not work correctly. Fifty percent of Asians have this mutation and respondent is of Asian ancestry.

14. Dr. Taylor's theories were unsupported by any persuasive scientific evidence. Most importantly though, he acknowledged that a person cannot have a higher level of Dextromethorphan in her body than the amount which she ingested, regardless how the elimination/metabolism process was affected by the factors he had considered.

Respondent's Defenses to Use of Dangerous Drug

15. The Accusation alleges that on the date of her arrest, respondent used dangerous drugs in a manner dangerous to herself and others, in violation of Business and Professions Code section 4301, subdivision (h). Respondent asserts that Dextromethorphan is not a dangerous drug as defined by the Business and Professions Code and therefore this

allegation is unfounded and must be dismissed. Complainant asserts that Dextromethorphan is a dangerous drug in the colloquial sense of the word "dangerous" and that respondent took dangerous amounts of Dextromethorphan, thereby making her consumption of the drug dangerous.

16. Business and Professions Code (B&P) section 4022 defines "dangerous drug" and "dangerous device" as follows:

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

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006.

17. It was proved that respondent used Dextromethorphan in a manner dangerous to herself and others. And it is clear that excessive amounts of Dextromethorphan are dangerous. However, Dextromethorphan, itself, is not a dangerous drug pursuant to B&P section 4022. It is not "unsafe for self use" when not abused and it does not require a prescription. The legislature is presumed to have known how it had defined "dangerous drug" when enacting section 4301, subdivision (h), which provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct "including the administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." Accordingly, respondent's defense to the second cause for discipline is sound and that allegation must be dismissed.

March 22, 2009 Impairment

18. On March 22, 2009, respondent was employed as the only pharmacist on duty at the Walgreens Pharmacy, Cleveland Store in Madera and was scheduled to work with senior pharmacy technician, Ashley Ross Hansen (Hansen). Hansen has been a licensed pharmacy technician for nine years. She graduated from the pharmacy technician program at Fresno College. Hansen testified at the hearing and related her experiences with respondent on March 22, 2009. She was an extremely credible witness, cogent, clear and very intelligent. Hansen had worked with respondent once previously but did not remember her.

Hansen noticed that respondent came in to the pharmacy at about 10:00 a.m. with a bloody finger but did not want a Band-Aid. Shortly after arriving, respondent left the pharmacy to go out to her car to get her iPod. After respondent returned to the pharmacy, Hansen noticed that respondent was not filling prescriptions. Hansen told respondent that the prescriptions needed to be filled and started filling them herself. Respondent walked over to her and started to talk about her "personal stuff." She talked about planning a wedding and about her fiancée talking to other women on Facebook. Respondent "went on and on" about her relationship problems. Hansen did not want to hear about the problems and just wanted to get the work done.

19. At around 11:30 a.m., it was apparent to Hansen that respondent was no longer able to operate the computer effectively. The system required that the pharmacist type "F4" on the keypad and respond to four to six items to verify a prescription and print the prescription label and flyer. Respondent would say "what is wrong with the computer?" and Hansen would have to step in and press F4 for her and type the responses.

20. When people would drop off their prescriptions, Hansen told them it would be 15 minutes before the prescriptions were ready and to come back. While Hansen was selling a prescription and had just offered the patient a consultation on the new prescription, respondent told her she was going out to buy chocolate. Hansen had to tell the patient waiting for the consultation to wait. Hansen did not think that respondent was leaving the store but when respondent did not return she paged respondent. The assistant manager told Hansen that respondent had left the building. Hansen told the patient waiting for consultation that she would have the pharmacist call her and took her name and number.

21. Respondent did not return for at least 20 minutes. During that time the assistant manager helped Hansen ring up customers. When respondent returned she handed a chocolate candy bar to Hansen and then started eating hers. Respondent then offered her partially eaten candy bar to a customer as Hansen was ringing up the customer's prescription sale. The patient declined and said that he was a diabetic and respondent replied "I was not aware of your predetermined answer."

22. Hansen observed that respondent did not look alert, she was unstable mentally and physically and she was not in the same condition she was in when she walked in the door in the morning. Respondent had slurred speech and great difficulty doing her work. She was wobbling and had very odd movements. She stood by the drive through window and did some yoga movements in an area where the customers picking up prescriptions saw her. Hansen was embarrassed by respondent's conduct. Respondent was upset that Hansen was not paying attention to her relationship problems.

23. At one point, a man named Guadalupe came to the consult window. He was a new patient so respondent was required to register him in the computer system. Respondent gave him a hard time about his name, asking him whether he was sure that Guadalupe was his name because it is a girl's name. Respondent typed in the name incorrectly and Hansen had to correct it. Respondent did not scan the prescription and when Guadalupe came back

to pick up the prescription Hansen had to scan it. Respondent then had a difficult time verifying the prescription through the F4 process. She repeatedly hit "Enter" instead of going through the stepped process of the F4 verification. When Hansen assisted her in going through the F4 process, respondent did not even look at what Hansen typed.

24. At one point, respondent was helping a customer in the drive through. She made a comment to the effect that "you people with two last names confuse us."

25. Respondent tried to take a prescription over the phone for Diovan, a medication for high blood pressure. Respondent wrote that the prescription was for Diaven at 50 mg. Hansen knew that the medication was improperly spelled and that it did not come in 50 mg doses. She set the prescription aside and did not process it.

26. Respondent took another prescription over the phone for a child. The prescription was not complete in that the strength of the medication was not recorded. Hansen asked respondent more than once what dosage she should give and respondent wrote "figure it out" on the prescription form. Hansen searched the computer for children's dosages and found the lowest dose and dispensed that.

27. Later in the day, a mother called the pharmacy for a child's prescription for omnicef and prednisone, and it took respondent over 45 minutes to get the prescription ready. After the prescription was dispensed, the mother called and said that she had not received the correct number of doses of prednisone. Respondent began arguing with the mother, saying that she had dispensed the correct amount. Hansen observed that respondent was not alert enough to count and she heard respondent make comments while on the phone to the mother to the effect that she hates mean people.

28. Walgreens employees and customers noticed that something was wrong with respondent and whenever she had a customer interaction Hansen had to step in and apologize. Hansen was extremely embarrassed. Finally, at about 3:30 p.m., respondent told Hansen that her fiancée had taken her Lexipro and her Alazopram, that she [respondent] was stupid and that she wanted to crawl up in a ball and die. Hansen alerted the store manager that respondent was making mistakes and that she had threatened her own life. Hansen also called the pharmacy manager and told him what was going on. The pharmacy manager ordered the pharmacy closed. Respondent resisted closing the pharmacy and kept asking what she had done wrong and why they were closing.

29. Irene Garcia (Garcia) was the Beauty Manager on duty at Walgreens on March 22, 2009. Her declaration was admitted in evidence. Ms. Garcia wrote that she noticed respondent had a "weird behavior." In the morning, Ms. Garcia was looking for respondent because one of her customers had a question. Ms. Garcia went to the pharmacy and asked where respondent was. Hansen told her that respondent had stepped out to her vehicle. Garcia told the customer the pharmacist would be right back, but respondent did not return for at least 15 minutes. Garcia apologized to the customer and when she saw respondent approaching she noticed there was something wrong with respondent. Respondent was

talking really fast and she was mumbling a lot while she was headed toward the pharmacy. She was swerving while she was walking. Garcia thought this was "kind of weird" because she had seen her a couple of times and this behavior was not like her. Later on in the afternoon when she went back to the pharmacy she saw respondent was talking to customers and she was not talking clearly. When respondent talked on the intercom she also was not talking clearly. "You could not understand what she was saying." Later, when they were forced to close the pharmacy respondent did not want to leave because she wanted to know what she did wrong. The manager told her that the pharmacy had to close down and she should direct any questions to Mr. Willet. As respondent was heading out the door she swerved and hit the pharmacy counter. She appeared to be drunk, but Ms. Garcia did not smell alcohol. When the manager and respondent and Garcia were walking to the office respondent was not walking straight and she almost hit one of the side panels in the aisle. When she was punching out, Garcia was behind her and respondent kept punching in the wrong numbers. Garcia saw her walking to her car and she was going the wrong way.

30. Amandeep Sekhon (Sekhon) is a manager at Walgreens and was working on March 22, 2009. His declaration was admitted in evidence. He wrote that at 3:00 p.m. he walked over to the pharmacy and talked with respondent. She was not talking normally and her tone and words were not coming out properly. Her eyes were slightly red and she was not able to stand properly. She was always looking for support. Later, when the pharmacy was ordered closed, and Hansen had closed all the shutters and registers, respondent was still in the pharmacy. Sekhon and the assistant manager Gagandeep Sangha went to the pharmacy to tell respondent to close the pharmacy. He noticed that she was trying to help a customer, but in a rude way, even after she had been instructed to close the pharmacy. They waited for her to close the pharmacy but she would not do it and was continuously asking what she had done wrong and why the pharmacy was closing early. She was asking whether this ever happened before and said that she would be losing hours. She continued to argue with them even though they told her there they had directions from their supervisors to close the pharmacy. At last she agreed to close the pharmacy at 4:30 p.m. Ten to fifteen minutes "earlier or later" she came to the office, put the pharmacy keys in a white box and was trying to put the seal on the box, but was not able to do so as her hands were shaking. He had to help her put the seal on the box and show her where to put the box and how to sign the prescription log book.

31. Gagandeep Sangha (Sangha) the assistant manager wrote a declaration, which was admitted in evidence. He wrote that on March 22, 2009, respondent came in the pharmacy at 9:50 a.m. and was mentioning how tired she was because she had been working a lot the past week. Later she came out of the pharmacy and said she was tired and needed some chocolate. He walked with her to the candy aisle but she walked on past. He noticed that she had two medicine containers in her hands, but they had no labels and he could not see if there was anything in them. She went out the door and he thought that maybe she needed something from her car. He went back to his work and about 10 minutes later he went to the pharmacy and saw patients were waiting and respondent had not returned. He asked Hansen whether respondent had said she was taking a 15 minute break. Hansen said respondent had left the pharmacy without saying she was taking a break. He went to see if

she was in the store and he walked around the store twice and did not see her. Later, she snuck up behind him and asked him if she could get her purchase rung-up in cosmetics. Later in the day, a customer was looking in cosmetics for something called AZO and he could not remember where they had it so he asked respondent where it was. Her eyes were red and rolled around and were blinking fast. She said AZO is for urinary infection. That was all she said and he had to find the product itself.

32. Sangha later went to do his cash count in the pharmacy. He saw a gentleman at the register at one of the consultation windows. The gentleman at the register was being helped by Hansen. He asked the gentleman if he was being helped and the man looked up at respondent, who was looking at the computer screen. Respondent looked up at Sangha and snapped "Yes I am helping him, unless he would like to be helped by someone cuter." Her speech was slurred and her eyes were red and blinking.

33. At around 2:30 p.m. Sangha was covering Hansen so that she could be released for lunch. He was helping a couple at the window when respondent walked up to the customers and said "It's a long commute back, four hours. Do you guys have a new car?" The customers looked at each other and said that they thought she was asking if they had a new car. Respondent then walked to the bins in the pharmacy, stumbled and almost fell. Hansen came back after a 10 minute lunch and took over because people were coming back three and four times to get their prescriptions. Hansen had filled prescriptions and they were entered and filled in the work queue waiting for the pharmacist's verification. Sangha had to repeat himself a few times to get respondent to verify these prescriptions. At this point he was worried that she was intoxicated in some manner. Hansen had called the pharmacy manager and was told that the pharmacy was to be closed. He and Hansen brought two cash drawers out of the pharmacy at 3:45 p.m. but respondent would not budge because she wanted to know why they were closing down. The shutters were closed but the drive through was filled with angry customers who wanted to know where their prescriptions were. The customers saw that the pharmacist was still there and this encouraged them to stay.

34. Respondent began talking to a customer at the drive through and raised her voice and said "I'm trying to HELP you if you give me the right information!" He and Sekhon were watching respondent in disbelief. They told her to leave but she continued talking to the customer. When she walked away to look for the customer's medicine Sangha asked the customer to come back the next day because they had to close down the pharmacy. Another man came to the window and was mad because this was the third time he had come for his prescription. He wanted his prescription back and Sangha asked respondent if he could give it back to him. Respondent did not know what to do. She said that she had to fill it, and she tried about six times to get the patient's name right on the computer. She did fill the prescription. Another customer came in and Sangha told respondent she had to leave because customers would keep coming as long as they saw her there. She was furious and she finally left the pharmacy at 4:30 p.m., went into the office and kept calling managers on the phone. She sat in the office for 20 minutes or so and then got up and stumbled to the bathroom and was not walking straight. Sangha left at about 4:45 p.m. and respondent was still in the store. He came back about five minutes later because he forgot to pick up his

check and he saw respondent's car parked in the middle of the driveway leading up to the shopping center. About 30 seconds later she drove off.

35. The Accusation alleges that respondent's work as a pharmacist on March 22, 2009, constituted incompetence, pursuant to B&P section 4301, subdivision (b), and gross negligence pursuant to subdivision (c), in that "she worked as a pharmacist while impaired, most likely due to a combination of psychological problems and prescription drugs, to an extent that she engaged in odd and irrational behavior and was unable to safely perform the duties of a pharmacist."

36. The evidence is clear and convincing that respondent was impaired on March 22, 2009, during her shift at Walgreens and that she engaged in irrational behavior and was unable to safely perform the duties of a pharmacist. Dr. Iknoian testified that during this period of impairment, respondent committed several acts of incompetence and several acts of gross negligence as follows:

- Respondent's leaving a pharmacy technician, Hansen, without supervision while Hansen was selling a prescription was incompetent and grossly negligent. This lack of coordination and supervision causes confusion and could lead to patient harm. Respondent's inability to verify prescriptions on the computer was gross negligence and incompetence and could lead to patient harm.
- Respondent's failure to verify the accuracy of the Diovan prescription she took over the phone was gross negligence and incompetence. The pharmacist must verify the accuracy of a prescription and to follow-up with the provider to determine the proper dosage. Diovan is a "serious medication" often used for treating blood pressure. An incorrect dosage could result in death. Respondent should have verified the dosage and verified spelling of the medication.
- Respondent did not know the correct dosage of prednisone that would apply to the child patient. This medication is to prevent infection and it is essential that the correct dosage be provided. Respondent did not meet the standard of care. Her behavior could fit a range of incompetent behavior, was egregious and unsafe. It was also a very significant deviation from the standard of care not to know and verify the correct dosage before issuing a medication. Additionally, it was below the standard of care to provide the wrong number of doses to a patient, even if the number of pills was too few. There is a potential for injury from furnishing too few steroid doses.
- Respondent did not meet the standard of care in conducting consultations. Consultations are paramount in dispensing medication. Only pharmacists have the responsibility for describing the medication and its effects and answering patient questions. The consultation is the education component and the quality review component of the practice. A proper consultation is necessary as well to identify errors that might have gotten through the prescription filling process. The failure to

offer consultation is substantially below the standard of care and is gross negligence and incompetence.

■ Offering a half eaten candy bar to a patient and telling him he had a predetermined answer to the offer, telling a patient that he had a girl's name and telling customers their use of hyphenated names is a problem, are below the standard of care. The pharmacist must exhibit respect for the members of the public and have a demeanor that promotes confidence. Respondent's demeanor suggested impairment, lack of judgment and an inability to perform at the level of a pharmacist. Respondent's actions constituted gross negligence and incompetence.

Respondent's Defenses to March 22, 2009 Impairment

37. Respondent testified that she was not aware of the nature and extent of her conduct on March 22, 2009, until she read the statements of her fellow Walgreens employees. She was not feeling well that day. She did not know she was impaired. She was talking about her personal problems incessantly because that was all she could think about, it concerned her all of the day. To the best of her recollection she had not taken any medications. She does not know exactly what happened that day but she was emotional and had not gotten enough sleep and other than that she does not have a good explanation for her conduct. Never before has anyone alleged she was impaired at work and never since. In 2007 she was diagnosed with bipolar disorder but does not believe bipolar disorder contributed in any way to her conduct on March 22, 2009, nor has it affected her pharmacy practice.

38. Respondent's counsel argued that respondent could not have been incompetent if she was simply mentally unfit to work on March 22, 2009, and she could not have been grossly negligent if she was working while unaware that she was impaired. Mr. Iknoian agreed with him only to the point that if she was unknowingly impaired she would need care and treatment. Respondent's argument was not persuasive. Regardless of the semantics involved, respondent's practice of pharmacy was a significant departure from the standard of care on March 22, 2009, and her pattern of mistakes and unprofessional conduct demonstrated incompetence on that date. No expert opinion is necessary to confirm that respondent lacked the basic skills to perform the duties of a pharmacist on March 22, 2009, and that she departed significantly from the standard of care.

39. Moreover, the premise that on March 22, 2009, respondent suffered a one time, unknown medical issue, which never occurred previously or subsequently was not supported by any evidence and was contradicted by the evidence. Just three months earlier respondent had been driving a vehicle on the way to work, under the influence of the Dextromethorphan. Her psychiatrist, Dwight W. Sievert, M.D., submitted a November 2009 report to the Board, in which he included summaries of her visits around the time of her December 2008 arrest and around March 22, 2009. He had diagnosed her on April 18, 2007, with Bipolar Mood Disorder Type II. In September 2008 she reported she stopped her medications for bipolar disorder. She received a work reprimand and had been confronted

by a work supervisor for erratic behavior at Children's Hospital. "She did seem to gloss over or brush off negative workplace encounters to some degree and this was interpreted as unusual for her, and perhaps appear to be ... hypomanic behavior due to having been recently off her medications." On September 25, 2008, she reported having been fired from her job at Children's Hospital. On November 6, 2008 she appeared distraught and with sunken eyes and with an extremely low mood. She reported she was working at Walgreens pharmacy. Due to her mood and multiple vegetative symptoms, she was started on Pristiq 50 mg. She had stopped taking Lexapro on her own due to lack of improvement in her panic attacks. On January 6, 2009 she reported she received a DUI after over-consuming cough syrup. She reported that her significant other had taken all her medications away but then, realizing his error, he allowed her to begin retitrating her mood stabilizing medications, Lamictal and Topiramate, and she was working to regain previous therapeutic dosage levels. On July 21, 2009, she appeared tangential, over productive at speech, with mild mental confusion and episodic impulsive outbursts. She reported she had jumped out of a moving vehicle being driven by her significant other within days of the appointment. At the session she appeared almost manic, and spoke in a defensive rather pressured way. And, when Dr. Sievert initially diagnosed her in April 2007, he noted that she was impulsive and showed abrupt changes during the session and she indicated that this is how she presented to others to work at times and she felt as if she had no control over some of these mood fluctuations. She reported that when she felt stressed she saw herself as being abrupt and rude and was told that by colleagues.

40. In sum, respondent was not credible in trying to cast her March 22, 2009 conduct as a mysterious, one-time event where, unbeknownst to her, she was mentally unfit to work and was unable to correct the situation.

Rehabilitation Evidence

41. Respondent maintains that she should not be disciplined because she was not at fault for the December 2008 or March 2009 conduct and she has since shown a sustained period of stable conduct. The purpose of licensing discipline actions is not to punish the licensee but to protect the public. The evidence is clear and convincing that respondent committed acts which placed the public and patients at risk of harm and the Board must act to protect the public. However, the actions the Board need take now to protect the public, almost four years since March 2009, are entirely dependent upon the risk that respondent poses now. Respondent testified that she has a stable married life with a small child, and has built a more solid support system of family and friends. She follows her "practitioner's therapies to the letter." She has had drug screens over the years and they have all been negative. A pre-employment drug screen was done for her current employment at Emmanuel Hospital on March 9, 2009, and the negative report was admitted in evidence. Several negative drug screen results from May and June 2012 were admitted in evidence. Respondent testified that she is in good standing with Emmanuel Hospital, where she has worked as a pharmacist since March 2009.

42. Dr. Taylor testified that he has worked for Emmanuelle Hospital for 31 years. Respondent and he worked in the same department for three and half years. Most of the time their shifts are overlapping. He testified that respondent has very good work habits, is very competent and knowledgeable and is very accommodating to customers at the window and doctors and nurses on the telephone. There is no question about her competency and no question about impairment or safety. Dr. Taylor was credible in this portion of his testimony.

42. Melissa Gonzalez (Gonzales) has been a pharmacy technician at Emmanuel Medical Center for almost seven years. She has worked almost 24 years as a pharmacy technician. She testified that respondent works graveyard shift and for the past six months they have worked the same shift six shifts a week. Previously, they worked the same day and night shifts before they were assigned to the graveyard schedule. Respondent never appeared under the influence or erratic and she never exhibited any behavior that would make Gonzales question her competency or safety as a pharmacist. She testified that respondent has a very good rapport with all the nursing staff and is very helpful. The nurses are the "customers" during the night shift. Respondent is one of the best pharmacists in terms of relationships with the nurses. Gonzales has never witnessed her be unprofessional or rude. She, like Dr. Taylor, was shocked to hear the allegations against respondent, as they are so out of character for her. She was also surprised to find out that respondent is suffering from bipolar disorder because she has never seen her work erratically or "in any weird way." Gonzales was a credible witness.

43. Respondent's husband testified that she does not drink alcohol and does not abuse over-the-counter medications or other drugs, she is a good mother and has a stable home and work environment. He implied that respondent was stable on March 22, 2009, and that they had simply had a fight the night before and made up after work. His testimony was not persuasive, due to his lack of credibility about respondent's use of Dextromethorphan and for what he omitted about her behavior in 2008 and 2009. For instance, he was the driver when she jumped out of the moving car (Findings 3 and 39) and he was her fiancé when respondent told Hansen that her "husband" had taken her medications from her.

44. Respondent submitted letters from several friends and coworkers. Lay Ilwa Kaw, Pharm. D. wrote on May 15, 2012, that respondent is one of her best friends. She has been working with respondent since 2009 at Emmanuel Medical Center. During this time she has observed excellent professional behavior, exceptional work ethic and she has never witnessed any drug seeking behaviors. Respondent never displays any form of impairment while she is working. Dr. Kaw wrote that she has respect for respondent's work and clinical decisions. She is focused, competent and dedicated to her patients' care. In addition she is friendly and respectful.

45. Dean S. Karnaze, M.D. wrote on May 16, 2012, that he has known respondent over 10 years professionally and socially. She has always been a very dedicated intelligent pharmacist. She has always presented herself in a professional manner and he has never observed her to have any difficulty with substances or alcohol. "I know that Lana has been

treated by a psychiatrist for depression and that when she was pregnant with her first child, it was necessary for her to go off her medications. My understanding is that she is seeing a therapist and is now back on her maintenance medication.”

46. Sang un Bae, Pharm. D. wrote on May 9, 2012, that she has worked with respondent from September 2002 to November 2003, and that respondent was always detail oriented and patient oriented as well as dedicated, generous and empathetic.

47. Respondent’s sister and friends also wrote letters explaining that she was a hard worker and detail oriented, that she had a bad marriage but in 2008-2009 she entered a new relationship with her current husband which required some adjustment. Their sporadic arguments cause emotional stresses which were reflected in her relationships with others. Since then she has grown emotionally and since the birth of her child two years ago, she has come to recognize and acknowledge her emotional stressors and takes active steps to address them.

48. Dr. Sievert wrote a letter on September 21, 2012, updating respondent’s counsel on respondent’s status. The letter was not accompanied by his chart notes. Dr. Sievert summarized his treatment. He wrote that he diagnosed respondent with Bipolar Mood Disorder Type II on April 13, 2007. At no time did she appear impaired or unable to perform the functions as a pharmacist. He wrote that he saw her in January and July 2009, when she related she had been in jail for driving under the influence of cough syrup and alcohol. By 2009 she appeared tense and reported she also jumped out of a moving car. In both visits of January and July 2009 she appeared competent and reasonable. She made return visits through 2009 and through March 4, 2010. She returned in June of 2012, almost two years later. She noted she was continuing to take Lamictal, Lunesta and Xanax, which appeared appropriate. He noted that she did not appear impaired in any of her visits and had always been alert and cooperative. He last saw her on September 4, 2012. She reported she is in therapy with a psychologist in Merced. “I have never seen a reason that she would not be able to safely practice as a pharmacist.”

49. Dr. Seivert’s letter is not persuasive, to the extent it was submitted to show that respondent is now safe to practice. He concludes that she was safe to practice pharmacy in 2007, 2008 and 2009, even though she was arrested for driving under the influence and had jumped out of a moving car during that time period. He bases this on the fact that she appeared able to practice when he saw her. However, his summary of chart notes from his letter to Dr. Iknioian in November 2009, indicate she was not safe to practice. His notes show respondent had severe panic attacks, disabling depression, and difficulties relating to persons at work. His notes relate she was terminated from work, had disagreeable encounters with peers and “dreadful” violent nightmares during this time. His notes record the fact respondent had been found passed out by housemates on December 17, 2007, and that she had appeared for a session distraught with sunken eyes, low mood and vegetative symptoms on November 6, 2008. In September 2009, she reported high levels of stress, near panic and resentment. In September 2009, he noted that “the patient has had marginal success in being stabilized with medications and individual psychotherapy.” On September 16, 2009, he wrote

that he was concerned that there was a fairly lengthy interruption in their treatment over the past two years. And he concluded in September 2009 that "there has been marginal success in our attempts at treating this young lady with this unfortunate disease." He also noted on October 23, 2009, that she should "throw herself at the mercy of the pharmacy board and comply with whatever diversion, monitoring or probation that they may propose as a means of her becoming more in touch with her illness, as I suspect there is a sense of denial, as well as the feelings of powerlessness over this disease and if she was able to have a significant moderate remission in her symptoms, it would help her also to identify other needs and improve her ability to ask for help in these particular areas." He concluded his letter to the Board on November 12, 2009 by stating that "I respectfully ask you work as judiciously in rehabilitating Ms. Limonand her professional status, as we have worked very hard to keep her functioning to the best of her abilities, which obviously has not allowed her to function personally and professionally, as we would have hoped for in this particular instance." In light of these chart notes comments, it is difficult to understand how Dr. Sievert could credibly claim that respondent was always competent to practice pharmacy. Additionally, he did not see her between March 2010 and June 2012 and then only saw her until September 2012. As noted above, there are no chart notes reflecting this recent treatment and no way for the Board to discern her mental status during this time.

50. Respondent testified that she is currently seeing a therapist, but she added no details. No documents were offered in evidence identifying her therapist or verifying the nature and frequency of treatment.

Discussion of Rehabilitation Evidence and Determination of Discipline

51. Respondent was intoxicated on her way to work as a pharmacist and behaved very erratically and dangerously while she was working as a pharmacist. She denies she was intoxicated or had consumed excessive amounts of Dextromethorphan when she was arrested. She denies that her behavior at Walgreens pharmacy had anything to do with a disorder or medications, claims she was not aware she was acting in an erratic and dangerous manner and attributes any erratic behavior to being upset over a fight with her fiancée. Respondent has not taken responsibility for her conduct and has not identified any causes for her conduct; instead choosing to imply that a drug interaction led to her arrest and characterize the conduct at Walgreens as an aberration. Either she is being deliberately dishonest or as Dr. Seivert suggests, she is in denial about her disease. Regardless of respondent's motivations for her posture at hearing, her failure to accept responsibility and explain changes she has made that are related to the causes of her conduct supports revocation of her license because there would be no assurances that this conduct would not be repeated. However, as four years have passed, and respondent has been working full-time with the respect of her peers and no adverse consequences, outright revocation would not be warranted. Nevertheless, the Board would require assurances that respondent would not, when faced with the next life crisis, devolve into the behaviors she exhibited in 2008 and 2009. She has not provided these assurances. Accordingly, in order to protect the public the Board must place respondent's license on probation on terms and conditions designed to protect the public from repetition of these behaviors.

Costs

52. Complainant submitted a Certification of Costs incurred stating that the cost of the Inspector totaled \$9,741, based on \$102 per hour at 95.50 hours. Complainant submitted a certification of prosecution costs and declaration stating that the Department of Justice has billed the Board of Pharmacy \$5,227.50 for the time spent in the investigation and prosecution of this matter. Pursuant to B&P section 125.3⁴ the certifications are prima facie

⁴ Business and Professions Code Section 125.3 provides:

a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

evidence of the reasonable costs of investigation and prosecution of the case. Respondent maintained that the investigation costs were excessive. However, Dr. Iknoian testified persuasively that his investigation required him to conduct extensive interviews particularly of those witnessing the incident at Walgreens. Respondent was invited to present evidence regarding ability to pay costs. The only evidence presented was to the effect that revocation would devastate her family financially. And, although respondent prevailed on the second allegation, use of a dangerous drug, the discipline imposed was not affected and the costs of investigation and prosecution would have been the same had that charge not been brought.

53. Respondent may pay the costs in installments over the course of her probationary term, on a payment schedule set forth in the terms and conditions of probation.

LEGAL CONCLUSIONS

1. B&P section 4300 states in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

[¶...¶]

2. B&P section 490, subdivision (a) provides:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. B&P section 4301, subdivision (l) provides:

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter... In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the

time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

4. As set forth in Findings 3 through 14, respondent was convicted of a violation of Vehicle Code section 23103, subdivision (a) pursuant to Vehicle Code section 23105.5 (Reckless driving with drugs and/or alcohol), a crime substantially related to the qualifications, functions and duties of a pharmacist. Legal cause was established by clear and convincing evidence to revoke respondent's license for unprofessional conduct within the meaning of B&P sections 490, subdivision (a) and 4301, subdivision (l).

5. As set forth in Findings 15 through 17, it was not established by clear and convincing evidence that respondent violated B&P section 4300, subdivision (h), by use of a dangerous drug in a manner dangerous to herself and others. Accordingly, the second cause for discipline is dismissed.

6. B&P section 4301, subdivisions (b) and (c) provide:

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.

7. As set forth in Findings 18 through 40, it was established by clear and convincing evidence that respondent committed multiple acts of incompetence and gross negligence on March 22, 2009, in violation of B&P section 4301, subdivisions (b) and (c).

8. As set forth in Findings 52 and 53, the reasonable cost of investigation and prosecution of this matter were \$14,968.50.

9. The gravity of respondent's violations were considered and weighed against the passage of four years without further incident and against respondent's rehabilitation evidence. As set forth in Findings 41 through 51, the public would best be protected by placing respondent's license on probation. Accordingly, the following order is made.

ORDER

Original Pharmacist License Number RHP 54092 to Lana Lin a.k.a. Lana Limon is revoked; however, the revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. **Report to the Board**

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

3. **Interview with the Board**

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3725 (OAH No.12050745) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3725, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 3725 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 3725 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which

a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$14, 968.50. Respondent shall make said payments as follows: \$300 per month. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

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

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacist license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent

may tender her pharmacist license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacist license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

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

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 120 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 120 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

“Cessation of practice” means any calendar month during which respondent is not practicing as a pharmacist for at least 20 hours, as defined by Business and Professions Code section 4000 *et seq.* “Resumption of practice” means any calendar month during which respondent is practicing as a pharmacist for at least 20 hours as a pharmacist as defined by Business and Professions Code section 4000 *et seq.*

14. Violation of Probation

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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

15. Completion of Probation

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

16. Mental Health Examination

Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the board or its designee, respondent shall undergo, at her own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the board’s accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding respondent’s judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board or its designee.

If the evaluator recommends, and the board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the board that a recommendation for psychotherapy has been accepted, respondent shall submit to the board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent’s choice. Within thirty (30) days of approval thereof by the board, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy

with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate board-appointed or board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacist, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

17. **Psychotherapy**

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name and qualifications of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's own expense, a mental health evaluation by a board-appointed or board-approved psychiatrist or psychologist. If the approved evaluator recommends that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and such other information as may be required by the board or its designee.

If at any time the treating therapist determines that respondent cannot practice safely or independently, the therapist shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

18. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362, subdivision (c)(2). Respondent shall successfully participate in and complete his or her current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacist technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

19. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be

considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

20. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

21. Prescription Coordination and Monitoring of Prescription Use

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of drugs, and/or of mental illness and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice

of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

22. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

23. Consultant for Pharmacist-In-Charge


During the period of probation, respondent shall not supervise any intern pharmacist, or serve as a consultant to any entity licensed by the board. In the event that the respondent is currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent consultant at its own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval. Within thirty (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which she is not the current PIC. The board may, in case of an employment change by respondent or for other reasons as deemed appropriate by the board or its designee, preclude the respondent from acting as a pharmacist-in-charge. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

24. Ethics Course

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

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

Dated: February 14, 2013



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

THE UNIVERSITY OF CHICAGO
LIBRARY

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 LORRIE M. YOST
Deputy Attorney General
4 State Bar No. 119088
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-2271
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3725

12 **LANA LIN, A.K.A., LANA LIMON**
Lana Lin, a.k.a., Lana Limon
13 2192 E. Rush Ave.
Fresno, CA 93730
14 **Pharmacist License No. RPH 54092**

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 10, 2002, the Board of Pharmacy issued Pharmacist License
22 Number RPH 54092 to Lana Lin, a.k.a., Lana Limon (Respondent). The pharmacist license was
23 in full force and effect at all times relevant to the charges brought herein and will expire on June
24 30, 2012, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4301 of the Code states in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 "(b) Incompetence.

6 "(c) Gross negligence.

7

8 "(1) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment."

25 5. Section 490 of the Code provides, in pertinent part, that a board may suspend or
26 revoke a license on the ground that the licensee has been convicted of a crime substantially
27 related to the qualifications, functions, or duties of the business or profession for which the
28 license was issued.

1 6. Section 118, subdivision (b), of the Code provides that the expiration of a license
2 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
3 within which the license may be renewed, restored, reissued or reinstated.

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

8 FIRST CAUSE FOR DISCIPLINE

9 (Conviction of a Substantially Related Crime)

10 8. Respondent is subject to disciplinary action under sections 490 subdivision (a) and
11 4301 subdivision (l) in that on or about July 20, 2009, in the case known as *People v. Lin*, Case
12 No. M09911427, Fresno County Superior Court, she was convicted on a plea of nolo contendere
13 of violating Vehicle Code section 23152 subdivision (a) (driving under the influence). The
14 circumstances are that on December 11, 2008, Respondent was driving while under the influence
15 of excessive amounts of dextromethorphan, an over the counter cough suppressant. The amount
16 detected in Respondent's blood was .83 mg./L, an amount more than 20 times greater than the
17 effective level of the drug. While under the influence, Respondent was spotted driving erratically
18 and failing to yield to an emergency vehicle, while she was driving to work.

19 SECOND CAUSE FOR DISCIPLINE

20 (Use of Dangerous Drugs in a Manner Dangerous to Self and Others)

21 9. Respondent is subject to disciplinary action under section 4301 subdivision (h) in that
22 on or about December 11, 2008, Respondent was driving while under the influence of excessive
23 amounts of dextromethorphan, as described in Paragraph 8, above, putting herself and others in
24 danger by driving erratically and failing to yield to an emergency vehicle.

25 THIRD CAUSE FOR DISCIPLINE

26 (Incompetence)

27 10. Respondent is subject to disciplinary action under section 4301 subdivision (b) in that
28 on or about March 22, 2009 she worked as a pharmacist while impaired, most likely due to a

1 combination of psychological problems and prescription drugs, to an extent that she engaged in
2 odd and irrational behavior, and was unable to safely perform the duties of a pharmacist.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Gross Negligence)

5 11. Respondent is subject to disciplinary action under section 4301 subdivision (c) in that
6 on or about March 22, 2009 she worked as a pharmacist while impaired, most likely due to a
7 combination of psychological problems and prescription drugs, to an extent that she engaged in
8 odd and irrational behavior, and was unable to safely perform the duties of a pharmacist.

9 PRAYER

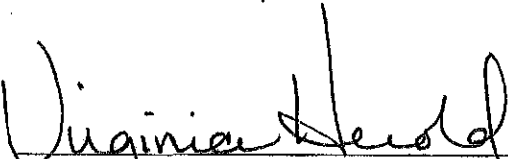
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacist License Number RPH 54092, issued to Lana Lin,
13 a.k.a., Lana Limon

14 2. Ordering Lana Lin, a.k.a., Lana Limon to pay the Board of Pharmacy the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;

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

18
19
20 DATED: 11/9/11


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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