

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

In the Matter of the Accusation Against:

**JEFFERSON PLAZA PHARMACY, RUTH
CHAN, Sole Owner
3137 Jefferson Avenue
Redwood City, CA 94061**

Pharmacy Permit No. PHY 11062

**JOHNNY PINGHON CHAN
260 Sierra Drive
Hillsborough, CA 94010**

Pharmacist License No. RPH 32261

**MARICON PAYTE ESMABE
3561 Farmhill Blvd., #10
Redwood City, CA 94061**

**Pharmacy Technician Registration No. TCH
124483**

Case No. 5113

OAH No. 2015010397

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER - AS TO
MARICON PAYTE ESMABE ONLY**

Respondents.

DECISION AND ORDER

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

This Decision shall become effective on July 8, 2015.

It is so ORDERED on July 1, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

AMARYLIS GUTIERREZ
Board President

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

11 In the Matter of the First Amended Accusation
Against:

12 **JEFFERSON PLAZA PHARMACY, RUTH**
13 **CHAN, Sole Owner**
14 **3137 Jefferson Avenue**
Redwood City, CA 94061

15 **Pharmacy Permit No. PHY 11062**

16 **JOHNNY PINGHON CHAN**
17 **260 Sierra Drive**
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18 **Pharmacist License No. RPH 32261**

19 **MARICON PAYTE ESMABE**
20 **3561 Farmhill Blvd., #10**
Redwood City, CA 94061

21 **Pharmacy Technician Registration No. TCH**
22 **124483**

23 Respondents.

Case No. 5113

OAH No. 2015010397

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

[As to **MARICON PAYTE ESMABE**, only]

24 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
25 entitled proceedings that the following matters are true:

26 **PARTIES**

27 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
28 She brought this action solely in her official capacity and is represented in this matter by Kamala

1 D. Harris, Attorney General of the State of California, by Kim M. Settles, Deputy Attorney
2 General.

3 2. Respondent Maricon Payte Esmabe ("Respondent") is represented in this proceeding
4 by attorney Natallia Mazina, whose address is: 404 San Anselmo Avenue
5 San Anselmo, CA 94960

6 3. On or about August 23, 2013, the Board of Pharmacy issued Original Pharmacy
7 Technician Registration Number TCH 124483 to Maricon Payte Esmabe (Respondent). The
8 Pharmacy Technician Registration will expire on August 31, 2015, unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 5113 was filed before the Board of Pharmacy (Board) , Department
11 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
12 statutorily required documents were properly served on Respondent on September 5, 2014.
13 Respondent timely filed its Notice of Defense contesting the Accusation.

14 5. A copy of Accusation No. 5113 is attached as exhibit A and incorporated by
15 reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 5113. Respondent has also carefully read, fully
19 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
20 Order.

21 7. Respondent is fully aware of her legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
23 her own expense; the right to confront and cross-examine the witnesses against her; the right to
24 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
25 compel the attendance of witnesses and the production of documents; the right to reconsideration
26 and court review of an adverse decision; and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.

28 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and

1 every right set forth above.

2 **CULPABILITY**

3 9. Respondent admits the truth of each and every charge and allegation in Accusation
4 No. 5113.

5 10. Respondent agrees that her Pharmacy Technician Registration is subject to discipline
6 and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary
7 Order below.

8 **CONTINGENCY**

9 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
10 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
11 communicate directly with the Board regarding this stipulation and settlement, without notice to
12 or participation by Respondent or her counsel. By signing the stipulation, Respondent
13 understands and agrees that she may not withdraw its agreement or seek to rescind the stipulation
14 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
15 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
16 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
17 and the Board shall not be disqualified from further action by having considered this matter.

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

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

27 14. In consideration of the foregoing admissions and stipulations, the parties agree that
28 the Board may, without further notice or formal proceeding, issue and enter the following

1 Disciplinary Order:

2 **DISCIPLINARY ORDER**

3 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 124483 to
4 Respondent Maricon Payte Esmabe (Respondent) is revoked. However, the revocation is stayed
5 and Respondent is placed on probation for three (3) years on the following terms and conditions.

6 **1. Certification Prior to Resuming Work**

7 Respondent shall be automatically suspended from working as a pharmacy technician until
8 he or she is certified as defined by Business and Professions Code section 4202(a)(4) and
9 provides satisfactory proof of certification to the board. Respondent shall not resume working as
10 a pharmacy technician until notified by the board. Failure to achieve certification within one (1)
11 year shall be considered a violation of probation. Respondent shall not resume working as a
12 pharmacy technician until notified by the board.

13 During suspension, respondent shall not enter any pharmacy area or any portion of any
14 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
15 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
16 devices or controlled substances are maintained. Respondent shall not do any act involving drug
17 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
18 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
19 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
20 substances. Respondent shall not resume work until notified by the board.

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

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

25 **2. Obey All Laws**

26 Respondent shall obey all state and federal laws and regulations.

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

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

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

12 **3. Report to the Board**

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

21 **4. Interview with the Board**

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

27 **5. Cooperate with Board Staff**

28 Respondent shall cooperate with the board's inspection program and with the board's

1 monitoring and investigation of respondent's compliance with the terms and conditions of their
2 probation. Failure to cooperate shall be considered a violation of probation.

3 **6. Notice to Employers**

4 During the period of probation, respondent shall notify all present and prospective
5 employers of the decision in case number 5113 and the terms, conditions and restrictions imposed
6 on respondent by the decision, as follows:

7 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
8 respondent undertaking any new employment, respondent shall cause their direct supervisor,
9 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
10 tenure of employment) and owner to report to the board in writing acknowledging that the listed
11 individual(s) has/have read the decision in case number 5113 and the terms and conditions
12 imposed thereby. It shall be respondent's responsibility to ensure that their employer(s) and/or
13 supervisor(s) submit timely acknowledgement(s) to the board.

14 If respondent works for or is employed by or through a pharmacy employment service,
15 respondent must notify their direct supervisor, pharmacist-in-charge and owner at every
16 pharmacy of the terms and conditions of the decision in case number 5113 in advance of the
17 respondent commencing work at each pharmacy. A record of this notification must be provided
18 to the board upon request.

19 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
20 (15) days of respondent undertaking any new employment by or through a pharmacy employment
21 service, respondent shall cause their direct supervisor with the pharmacy employment service to
22 report to the board in writing acknowledging that they has read the decision in case number 5113
23 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
24 that their employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

28 "Employment" within the meaning of this provision shall include any full-time,

1 part-time, temporary or relief service or pharmacy management service as a pharmacy
2 technician or in any position for which a pharmacy technician license is a requirement
3 or criterion for employment, whether the respondent is considered an employee,
4 independent contractor or volunteer.

5 **7. Reimbursement of Board Costs**

6 As a condition precedent to successful completion of probation, respondent shall pay to the
7 board its costs of investigation and prosecution in the amount of \$1,500.00. Respondent shall
8 make said payment according to a payment plan approved by the Board. There shall be no
9 deviation from this schedule absent prior written approval by the board or its designee. Failure to
10 pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

13 **8. Probation Monitoring Costs**

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

18 **9. Status of License**

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

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

26 **10. License Surrender While on Probation/Suspension**

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

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

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

13 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
14 **Employment**

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

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

22 **12. Tolling of Probation**

23 Except during periods of suspension, respondent shall, at all times while on probation, be
24 employed as a pharmacy technician in California for a minimum of ten hours per calendar month.
25 Any month during which this minimum is not met shall toll the period of probation, i.e., the
26 period of probation shall be extended by one month for each month during which this minimum is
27 not met. During any such period of tolling of probation, respondent must nonetheless comply
28

1 with all terms and conditions of probation.

2 Should respondent, regardless of residency, for any reason (including vacation) cease
3 working as a pharmacy technician for a minimum of ten hours per calendar month in California,
4 respondent must notify the board in writing within ten (10) days of cessation of work and must
5 further notify the board in writing within ten (10) days of the resumption of the work. Any
6 failure to provide such notification(s) shall be considered a violation of probation.

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

10 "Cessation of work" means calendar month during which respondent is not
11 working for at least ten hours as a pharmacy technician, as defined in Business and
12 Professions Code section 4115. "Resumption of work" means any calendar month
13 during which respondent is working as a pharmacy technician for at least ten hours as
14 a pharmacy technician as defined by Business and Professions Code section 4115.

15 13. Violation of Probation

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

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

28

ENDORSEMENT

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

DATED: May 29, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Kim M. Settles

KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5113

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7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF PHARMACY
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

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A C C U S A T I O N

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3561 Farmhill Blvd., #10
19 Redwood City, CA 94061

20 Pharmacy Technician Registration No. TCH
124483

21 Respondents.

22
23
24 Complainant alleges:

25 **PARTIES**

26 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
27 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
28

1 11. Section 4306.5 of the Code states, in pertinent part:

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

3 "(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or
4 her education, training, or experience as a pharmacist, whether or not the act or omission arises in
5 the course of the practice of pharmacy or the ownership, management, administration, or
6 operation of a pharmacy or other entity licensed by the board.

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

11 "(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate
12 patient, prescription, and other records pertaining to the performance of any pharmacy function."

13 12. Code section 4342, subdivision (a), states:

14 "The board may institute any action or actions as may be provided by law and that, in its
15 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not
16 conform to the standard and tests as to quality and strength, provided in the latest edition of the
17 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
18 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division
19 104 of the Health and Safety Code)."

20 13. Code section 4115, subdivision (e)(1), states:

21 "No person shall act as a pharmacy technician without first being licensed by the board as a
22 pharmacy technician."

23 14. Code section 4051, subdivision (a), states:

24 "Except as otherwise provided in this chapter, it is unlawful for any person to manufacture,
25 compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or
26 compound a prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist
27 under this chapter."

28 ///

1 15. Code section 4328 provides, "[e]xcept as otherwise provided in this chapter, any
2 person who permits the compounding or dispensing of prescriptions, or the furnishing of
3 dangerous drugs in his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor."

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

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

15 17. California Code of Regulations, title 16, section 1714, states, in pertinent part:

16 ...

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

21 "(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly
22 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly
23 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for
24 pharmaceutical purposes."

25 18. California Code of Regulations, title 16, section 1735.5, states, in pertinent part:

26 "(a) Any pharmacy engaged in compounding shall maintain a written policy and procedure
27 manual for compounding that establishes procurement procedures, methodologies for the
28

1 formulation and compounding of drugs, facilities and equipment cleaning, maintenance,
2 operation, and other standard operating procedures related to compounding.

3 “(b) The policy and procedure manual shall be reviewed on an annual basis by the
4 pharmacist-in-charge and shall be updated whenever changes in processes are implemented.”

5 19. California Code of Regulations, title 16, section 1735.7, states, in pertinent part:

6 “(a) Any pharmacy engaged in compounding shall maintain written documentation
7 sufficient to demonstrate that pharmacy personnel have the skills and training required to properly
8 and accurately perform their assigned responsibilities relating to compounding.

9 “(b) The pharmacy shall develop and maintain an on-going competency evaluation process
10 for pharmacy personnel involved in compounding, and shall maintain documentation of any and
11 all training related to compounding undertaken by pharmacy personnel.”

12 20. California Code of Regulations, title 16, section 1735.8, subdivision (a), states:

13 “Any pharmacy engaged in compounding shall maintain, as part of its written policies and
14 procedures, a written quality assurance plan designed to monitor and ensure the integrity, potency,
15 quality, and labeled strength of compounded drug products.”

16 21. California Code of Regulations, title 16, section 1793 states:

17 “‘Pharmacy technician’ means an individual who, under the direct supervision and control
18 of a pharmacist, performs packaging, manipulative, repetitive, or other nondiscretionary tasks
19 related to the processing of a prescription in a pharmacy, but who does not perform duties
20 restricted to a pharmacist under section 1793.1.”

21 22. California Code of Regulations, title 16, section 1793.2 addresses the duties of a
22 pharmacy technician and states:

23 “‘Nondiscretionary tasks’ as used in Business and Professions Code section 4115, include:

24 “(a) removing the drug or drugs from stock;

25 “(b) counting, pouring, or mixing pharmaceuticals;

26 “(c) placing the product into a container;

27 “(d) affixing the label or labels to the container;

28 “(e) packaging and repackaging.”

FACTUAL ALLEGATIONS

1
2 28. From March 1, 1986, through the present, Respondent Chan has been the Pharmacist-
3 in-Charge ("PIC") of Respondent Jefferson Plaza Pharmacy.

4 29. On or about January 30, 2012, the Board received a complaint from Dr. N.A. stating
5 that Respondent Jefferson Plaza Pharmacy dispensed five different narcotics in a ten day period to
6 a patient he was treating for opioid dependence. On July 12, 2013, a Board inspector went to
7 Respondent Jefferson Plaza Pharmacy and conducted an inspection. Respondent Chan, the PIC,
8 was present and assisted with the inspection. Patient profiles, prescription records, and other
9 documents were obtained and reviewed during and after the inspection.

10 30. During the inspection on July 12, 2013, Respondent Jefferson Plaza Pharmacy and
11 Respondent Chan were unable to provide a written policy and procedure manual for
12 compounding. They were also unable to provide written documentation sufficient to demonstrate
13 that the pharmacy personnel had the skills and training required to properly and accurately
14 perform their assigned responsibilities relating to compounding. Additionally, Respondents were
15 unable to provide any training records for compounding staff or any written quality assurance
16 plans for compounded prescriptions.

17 31. The inspection revealed that pharmacy clerk and Respondent Esmabe compounded
18 prescriptions at the pharmacy from January 19, 2013, through July 9, 2013. Respondent Esmabe
19 had applied for a pharmacy technician's license, but had not yet been granted one. Respondent
20 Esmabe's intern pharmacist license had expired on January 31, 2012.

21 32. During the inspection conducted on July 12, 2013, the inspector observed that
22 Respondent Jefferson Plaza Pharmacy and Respondent Chan maintained numerous outdated
23 drugs in the pharmacy's current inventory of the compounding bulk ingredients and in the general
24 inventory of the pharmacy. The inspector also observed that the pharmacy was extremely
25 disorganized, dirty, and cluttered, especially in the compounding area of the pharmacy.

26 33. An overall review of the dispensing practice of Respondent Jefferson Plaza Pharmacy
27 revealed that between July 12, 2010, and July 12, 2013, Respondent Jefferson Plaza Pharmacy
28 and Respondent Chan dispensed 25,261 prescriptions for controlled substances, 4,178 of which

1 were for Dr. B.W., who prescribed excessive quantities of "drug cocktails" of controlled
2 substances, and provided early re-fills for patients as revealed by the Controlled Substance
3 Utilization Review and Evaluation System ("CURES") data for some of his patients.

4 34. The CURES program started in 1998, and required mandatory pharmacy reporting of
5 dispensed Schedule II controlled substances. The CURES program was amended in January
6 2005, to require mandatory pharmacy reporting of Schedule II, III, and IV controlled substances.
7 The data is collected statewide and can be used by healthcare professionals such as pharmacists
8 and prescribers to evaluate and determine whether their patients are utilizing their prescriptions
9 for controlled substances correctly. The data may be used to aid in the determination of whether a
10 patient has been to multiple prescribers and multiple pharmacies to fill controlled substance
11 prescriptions through the CURES Prescription Drug Monitoring Program ("PDMP"). The
12 CURES program currently requires mandatory weekly pharmacy reporting of Schedule II, III, and
13 IV controlled substances.

14 35. During the July 12, 2013, inspection, Respondent Chan stated that Dr. B.W. was a
15 local doctor who typically prescribed high doses of controlled substances. Respondent Chan did
16 not question the quantities because Dr. B.W. was a local "pain specialist." After initially calling
17 Dr. B.W. a few times to verify prescriptions, Respondent Chan no longer called Dr. B.W.
18 regarding the prescriptions he wrote. Respondent Chan was unfamiliar with the PDMP, and was
19 unable to articulate a clear understanding of the meaning of corresponding responsibility.

20 36. Further investigation of the records obtained during the inspection revealed
21 questionable dispensing by Respondent Jefferson Plaza Pharmacy. Between the period of July 12,
22 2010, and July 12, 2013, Respondent Jefferson Plaza Pharmacy and Respondent Chan dispensed
23 controlled substance prescriptions for prescribers and patients who were outside of the
24 pharmacy's normal service area. Respondents did not verify whether the prescriptions were
25 issued for a legitimate medical purpose. Respondents failed to use industry tools, such as the
26 PDMP, to verify early or duplicate dispensing for patients who were "doctor shopping" or
27 "pharmacy shopping," or both, as demonstrated by the activities of at least ten different patients.
28 Respondents failed to recognize "red flags," which should have given them the inkling of a

1 potential problem with the prescriptions, and invoked a duty of inquiry. These "red flags"
2 included filling prescriptions for patients outside the pharmacy service area and prescribers
3 outside of the pharmacy service area, the payment method of cash was far greater than third party
4 insurance, and early dispensing of controlled substances for various patients as determined by
5 CURES data.

6 37. Between July 12, 2010, and July 12, 2013, Respondent Jefferson Plaza Pharmacy and
7 Respondent Chan dispensed 25,261 prescriptions for various controlled substances. Respondent
8 Jefferson Plaza Pharmacy and Respondent Chan dispensed 204,195 doses of Hydrocodone/APAP
9 10/325 milligrams, and 528,718 tablets of Oxycodone 30 milligrams, far exceeding the volumes
10 of the same drugs dispensed by other pharmacies in the area with longer operating hours.

11 FIRST CAUSE FOR DISCIPLINE

12 (Drugs Lacking Quality or Strength)

13 (Bus. & Prof Code, §§ 4301, subd. (o), 4342, subd. (a))

14 38. Respondent Jefferson Plaza Pharmacy and Respondent Chan have subjected their
15 licenses to disciplinary action in that Respondents possessed pharmaceutical preparations and
16 drugs that did not conform to the standards and tests for quality and strength, as provided in the
17 latest edition of the United States Pharmacopeia or the National formulary, or that violate any
18 provision of the Sherman Food, Drug, and Cosmetic Law. (Bus. & Prof. Code, §§ 4301, subd.
19 (o), 4342, subd. (a).) The circumstances are set forth in paragraphs 28 through 35, above.

20 SECOND CAUSE FOR DISCIPLINE

21 (Operational Standards and Security)

22 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code Regs., tit. 15, § 1714, subds. (b), (c))

23 39. Respondent Jefferson Plaza Pharmacy and Respondent Chan have subjected their
24 licenses to disciplinary action in that they failed to maintain Jefferson Plaza Pharmacy's facility,
25 space, fixtures, and equipment so that drugs could be safely and properly prepared, maintained,
26 secured and distributed. (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code of Regs., tit. 16, §
27 1714, subd. (b).) Respondent Jefferson Plaza Pharmacy and Respondent Chan also failed to
28 maintain Jefferson Plaza Pharmacy's fixtures and equipment in a clean and orderly condition.

1 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code of Regs., tit. 16, § 1714, subd. (c).) The
2 circumstances are set forth in paragraphs 28 through 37, above.

3 THIRD CAUSE FOR DISCIPLINE

4 (No Written Compounding Procedure and Manual)

5 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code Regs., tit. 16, § 1735.5, subds. (a),(b))

6 40. Respondent Jefferson Plaza Pharmacy and Respondent Chan have subjected their
7 licenses to disciplinary action in that they failed to maintain a written policy and procedure
8 manual for compounding and failed to maintain clearly defined compounding policy and
9 procedures to reflect the compounding activities of the pharmacy. (Bus. & Prof. Code, § 4301,
10 subd. (o), Cal. Code Regs., tit. 16, § 1735.5, subds. (a), (b).) The circumstances are set forth in
11 paragraphs 28 through 37, above.

12 FOURTH CAUSE FOR DISCIPLINE

13 (Training Records and Competency Evaluation Process)

14 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code Regs., tit. 16, § 1735.7, subd. (a), (b))

15 41. Respondent Jefferson Plaza Pharmacy and Respondent Chan have subjected their
16 licenses to disciplinary action in that they failed to maintain written documentation sufficient to
17 demonstrate that their pharmacy personnel had the skills and training to perform compounding
18 activities and they failed to develop and maintain an on-going competency evaluation process.
19 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code Regs., tit. 16, § 1735.7, subd. (a), (b).) The
20 circumstances are set forth in paragraphs 28 through 37, above.

21 FIFTH CAUSE FOR DISCIPLINE

22 (Failure to Provide Compounding Quality Assurance)

23 (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code of Regs., tit. 16, § 1735.8, subd. (a))

24 42. Respondent Jefferson Plaza Pharmacy and Respondent Chan have subjected their
25 licenses to disciplinary action in that they failed to maintain a written policy and procedure
26 designed to monitor and ensure the integrity, potency, quality, and labeled strength of
27 compounded drug products. (Bus. & Prof. Code, § 4301, subd. (o), Cal. Code of Regs., tit. 16, §
28 1735.8, subd. (a).) The circumstances are set forth in paragraphs 28 through 37, above.

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1 July 11, 2010, through July 11, 2013, Respondents dispensed 25,261 prescriptions for various
2 controlled substances. Respondents dispensed 204,195 doses of Hydrocodone/APAP 10/325
3 milligrams, and 528,718 tablets of Oxycodone 30 milligrams. These amounts far exceeded the
4 volumes of the same drugs dispensed by other pharmacies in the area with longer operating hours.
5 The circumstances are set forth in paragraphs 28 through 37, above.

6 TENTH CAUSE FOR DISCIPLINE

7 (Bus. & Prof. Code, § 4306.5, subd. (a))
8 (Misuse of Education by Pharmacist)

9 47. Respondent Chan has subjected his Pharmacist License to disciplinary action in that
10 from July 11, 2010, through July 11, 2013, he failed to use his education, training, and experience
11 as a pharmacist when he filled prescriptions for large quantities of narcotics for patients who used
12 multiple prescribers and obtained early refills at Respondent Jefferson Plaza Pharmacy, as set
13 forth above in paragraphs 28 through 37. (Bus. & Prof. Code, § 4301, subd. (c), Bus. & Prof.
14 Code, § 4306.5, subd. (a).)

15 ELEVENTH CAUSE FOR DISCIPLINE

16 (Bus. & Prof. Code, § 4306.5, subd. (b))
17 (Failure to Exercise or Implement Best Professional Judgment or Corresponding Responsibility)

18 48. Respondent Chan has subjected his Pharmacist License to disciplinary action in that
19 he failed to exercise or implement his best professional judgment or corresponding responsibility
20 with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or
21 dangerous devices, or with regard to the provision of services. (Bus. & Prof. Code, § 4306.5,
22 subd. (b).) Specifically, from July 11, 2010, through July 11, 2013, Respondent Chan filled
23 prescriptions for large quantities of narcotics for patients who used multiple prescribers, paid
24 cash, and obtained early refills at Respondent Jefferson Plaza Pharmacy without taking measures
25 to confirm the prescriptions and that the large quantities of narcotics were prescribed for a
26 legitimate medical purpose. The circumstances are set forth in paragraphs 28 through 37, above.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Bus. & Prof. Code, § 4301)

3 (Unprofessional Conduct)

4 49. Respondents have subjected their licenses to disciplinary action in that they engaged
5 in unprofessional conduct as set forth in paragraphs 28 through 37, above. (Bus. & Prof. Code, §
6 4301.)

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
9 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Permit Number PHY 11062, issued to Jefferson
11 Plaza Pharmacy;

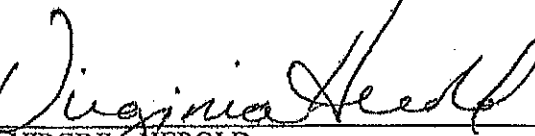
12 2. Revoking or suspending Pharmacist License Number RPH 32261, issued to Johnny
13 Pinghon Chan;

14 3. Revoking or suspending Original Pharmacy Technician Registration Number TCH
15 124483, issued to Maricon Payte Esmabe;

16 4. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;

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

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21 DATED: 7/27/14

22 

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

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