

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

In the Matter of the Accusation Against:

**MEDICINE SHOPPE 485  
219 East Olive Avenue  
Fresno, California 93728  
JEFF LUM  
Pharmacist-in-Charge**

**Pharmacy Permit No. PHY 41280**

and

**JEFF LUM  
219 East Olive Avenue  
Fresno, California 93728**

**Pharmacist License No. RPH 42790**

Respondents.

Case No. 5323

OAH No. 2016060952

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

(As to MEDICINE SHOPPE 485 Only)

**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 at 5:00 p.m. on November 23, 2016.

It is so ORDERED on October 24, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5323

12 **MEDICINE SHOPPE 485**  
13 **219 East Olive Avenue**  
14 **Fresno, California 93728**  
15 **JEFF LUM**  
16 **Pharmacist-in-Charge**

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**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

**(As To MEDICINE SHOPPE 485 Only)**

17 **Pharmacy Permit No. PHY 41280**

18 **and**

19 **JEFF LUM**  
20 **219 East Olive Avenue**  
21 **Fresno, California 93728**

22 **Pharmacist License No. RPH 42790**

23 Respondents.

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  
D. Harris, Attorney General of the State of California, by Kristina T. Jarvis, Deputy Attorney  
General.



1 documents; the right to reconsideration and court review of an adverse decision; and all other  
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
4 every right set forth above.

5 **CULPABILITY**

6 10. Respondent understands that the charges and allegations in Accusation No. 5323, if  
7 proven at hearing constitute cause for imposing discipline upon the Pharmacy Permit.

8 11. For the purpose of resolving this accusation without the expense and uncertainty of  
9 further proceedings, Respondent admits that at hearing Complainant could establish a factual  
10 basis for the charges and allegations in Accusation No. 5323, and that those charges and  
11 allegations are cause for discipline. Respondent hereby gives up its rights to contest those  
12 charges and allegations.

13 12. Respondent understands that by signing this stipulation it enables the Board to issue  
14 an order revoking its Pharmacy Permit and placing it on probation subject to the terms and  
15 conditions set forth in the Disciplinary Order below.

16 **CONTINGENCY**

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

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

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

7         16. In consideration of the foregoing admissions and stipulations, the parties agree that  
8 the Board may, without further notice or formal proceeding, issue and enter the following  
9 Disciplinary Order:

10                                 **DISCIPLINARY ORDER**

11             IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 41280 issued to Respondent  
12 Medicine Shoppe 485 is revoked. However, the revocation is stayed and Respondent is placed on  
13 probation for four (4) years on the following terms and conditions.

14             1. **Obey All Laws**

15             Respondent owner shall obey all state and federal laws and regulations.

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

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

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

1           **2. Report to the Board**

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

10           **3. Interview with the Board**

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

16           **4. Cooperate with Board Staff**

17           Respondent owner shall cooperate with the board's inspection program and with the board's  
18 monitoring and investigation of Respondent's compliance with the terms and conditions of their  
19 probation. Failure to cooperate shall be considered a violation of probation.

20           **5. Reimbursement of Board Costs**

21           As a condition precedent to successful completion of probation, Respondent owner shall  
22 pay to the board its costs of investigation and prosecution in the amount of \$15,000.00.  
23 Respondent is jointly and severally liable for this amount with Respondent Jeff Lum, pharmacist  
24 license number RPH 42790. Respondent owner shall make said payments as follows either in a  
25 lump sum within 60 days after the effective date of the Order, or in a payment plan approved by  
26 the Board. If such payment plan is approved, these costs must be paid in full no later than twelve  
27 (12) months prior to the termination of probation. Probation will not terminate until these costs  
28 are paid in full.

1           There shall be no deviation from this schedule absent prior written approval by the board or  
2 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
3 probation. The filing of bankruptcy by Respondent owner shall not relieve Respondent of their  
4 responsibility to reimburse the board its costs of investigation and prosecution.

5           **6. Probation Monitoring Costs**

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

10           **7. Status of License**

11           Respondent owner shall, at all times while on probation, maintain current licensure with the  
12 board. If Respondent owner submits an application to the board, and the application is approved,  
13 for a change of location, change of permit or change of ownership, the board shall retain  
14 continuing jurisdiction over the license, and the Respondent shall remain on probation as  
15 determined by the board. Failure to maintain current licensure shall be considered a violation of  
16 probation.

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

21           **8. License Surrender While on Probation/Suspension**

22           Following the effective date of this decision, should Respondent owner discontinue  
23 business, Respondent owner may tender the premises license to the board for surrender. The  
24 board or its designee shall have the discretion whether to grant the request for surrender or take  
25 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
26 the license, Respondent will no longer be subject to the terms and conditions of probation.

27           Upon acceptance of the surrender, Respondent owner shall relinquish the premises wall and  
28 renewal license to the board within ten (10) days of notification by the board that the surrender is

1 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
2 according to board guidelines and shall notify the board of the records inventory transfer.

3 Respondent owner shall also, by the effective date of this decision, arrange for the  
4 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
5 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
6 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
7 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
8 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
9 of the written notice to the board. For the purposes of this provision, "ongoing patients" means  
10 those patients for whom the pharmacy has on file a prescription with one or more refills  
11 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
12 days.

13 Respondent owner may not apply for any new licensure from the board for three (3) years  
14 from the effective date of the surrender. Respondent owner shall meet all requirements applicable  
15 to the license sought as of the date the application for that license is submitted to the board.

16 Respondent owner further stipulates that he or she shall reimburse the board for its costs of  
17 investigation and prosecution prior to the acceptance of the surrender.

18 **9. Notice to Employees**

19 Respondent owner shall, upon or before the effective date of this decision, ensure that all  
20 employees involved in permit operations are made aware of all the terms and conditions of  
21 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
22 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
23 remain posted throughout the probation period. Respondent owner shall ensure that any  
24 employees hired or used after the effective date of this decision are made aware of the terms and  
25 conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
26 Respondent owner shall submit written notification to the board, within fifteen (15) days of the  
27 effective date of this decision, that this term has been satisfied. Failure to submit such  
28 notification to the board shall be considered a violation of probation.



1 "Employees" as used in this provision includes all full-time, part-time,  
2 volunteer, temporary and relief employees and independent contractors employed or  
3 hired at any time during probation.

4 **10. Owners and Officers: Knowledge of the Law**

5 Respondent shall provide, within thirty (30) days after the effective date of this decision,  
6 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
7 or more of the interest in Respondent or Respondent's stock, and any officer, stating under  
8 penalty of perjury that said individuals have read and are familiar with state and federal laws and  
9 regulations governing the practice of pharmacy. The failure to timely provide said statements  
10 under penalty of perjury shall be considered a violation of probation.

11 **11. Posted Notice of Probation**

12 Respondent owner shall prominently post a probation notice provided by the board in a  
13 place conspicuous and readable to the public. The probation notice shall remain posted during  
14 the entire period of probation.

15 Respondent owner shall not, directly or indirectly, engage in any conduct or make any  
16 statement which is intended to mislead or is likely to have the effect of misleading any patient,  
17 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
18 of the licensed entity.

19 Failure to post such notice shall be considered a violation of probation.

20 **12. Violation of Probation**

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

26 If Respondent owner violates probation in any respect, the board, after giving Respondent  
27 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary  
28 order that was stayed. Notice and opportunity to be heard are not required for those provisions

1 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of  
2 the license. If a petition to revoke probation or an accusation is filed against Respondent during  
3 probation, the board shall have continuing jurisdiction and the period of probation shall be  
4 automatically extended until the petition to revoke probation or accusation is heard and decided.

5 **13. Completion of Probation**

6 Upon written notice by the board or its designee indicating successful completion of  
7 probation, Respondent license will be fully restored.

8 **14. Community Services Program**

9 Within sixty (60) days of the effective date of this decision, Respondent owner shall submit  
10 to the board or its designee, for prior approval, a community service program in which  
11 Respondent shall provide twenty-five thousand dollars (\$25,000.00) worth of free health-care  
12 related services to a community or charitable facility, or agency related to drug mail-back  
13 envelopes.

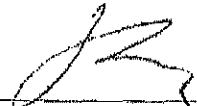
14 Within thirty (30) days of board approval thereof, Respondent owner shall submit  
15 documentation to the board demonstrating commencement of the community service program.  
16 Respondent owner shall report on progress with the community service program in the quarterly  
17 reports.

18 Failure to timely submit, commence, or comply with the program shall be considered a  
19 violation of probation.

20 **ACCEPTANCE**

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
22 discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it  
23 will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
24 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
25 Board of Pharmacy.

26 DATED: 9/19/2016

  
27 MEDICINE SHOPPE 485  
28 by JEFF LUM, partner and PIC  
Respondent

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**APPROVAL AS TO FORM AND CONTENT**

I have read and fully discussed with Respondent Medicine Shoppe 485 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/16/16

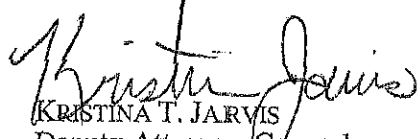
  
\_\_\_\_\_  
GREGORY P. MATZEN  
*Attorney for Respondent*

**ENDORSEMENT**

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

Dated: 9/16/16

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
JANICE K. LACHMAN  
Supervising Deputy Attorney General

  
KRISTINA T. JARVIS  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 5323**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KRISTINA T. JARVIS  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
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11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
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14 **JEFF LUM**  
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15 Pharmacy Permit No. PHY 41280  
16 and  
17 **JEFF LUM**  
219 East Olive Avenue  
18 Fresno, California 93728  
19 Pharmacist License No. RPH 42790  
20 Respondent.  
21

Case No. 5323  
**ACCUSATION**

23 Complainant alleges:

24 **PARTIES**

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

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

5 3. On or about December 19, 1995, the Board of Pharmacy issued Pharmacy Permit  
6 Number PHY 41280 to Medicine Shoppe 485 (Respondent). The Pharmacy Permit was in full  
7 force and effect at all times relevant to the charges brought herein and will expire on December 1,  
8 2016, unless renewed. Jeff Lum is and has been a partner and the Pharmacist in Charge (PIC)  
9 since December 19, 1995.

10 **JURISDICTION**

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

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

16 6. Section 4300.1 of the Code states:

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

22 7. Section 4301 of the Code states in pertinent part:

23 "The board shall take action against any holder of a license who is guilty of unprofessional  
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
25 Unprofessional conduct shall include, but is not limited to, any of the following:

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

28 ///

1           "(j) The violation of any of the statutes of this state, or any other state, or of the United  
2 States regulating controlled substances and dangerous drugs.

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

7           8. Section 4306.5 of the codes states:

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

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

13           9. Section 4036.5 of the code states:

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

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

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

28           ///

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

7 **DRUGS**

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

11 **COST RECOVERY**

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

16 **BACKGROUND INFORMATION**

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

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

28 ///



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

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

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

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Best Professional Judgment)**

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

28 ///

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

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

11 **SECOND CAUSE FOR DISCIPLINE**

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

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

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violation of Statutes Regulating Controlled Substances)**

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

24 **FOURTH CAUSE FOR DISCIPLINE**

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

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

28 ///

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

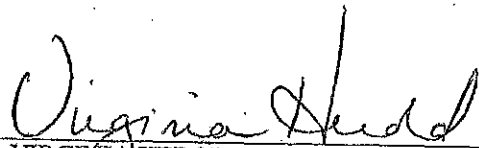
6 26. Respondent Jeff Lum, PIC, violated section 4036.5 by failing to ensure that  
7 Respondent Medicine Shoppe 485 and all employees complied with all state and federal laws and  
8 regulations pertaining to the practice of pharmacy, as set forth in paragraphs 20 through 25.

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 Pharmacy Permit Number PHY 41280, issued to Medicine  
13 Shoppe 485;
- 14 2. Revoking or suspending Pharmacist License Number RPH 42790, issued to Jeff Lum;
- 15 3. Ordering Medicine Shoppe 485 Pharmacy Permit Number PHY 41280 and Jeff Lum  
16 Pharmacist License Number RPH 42790, jointly and severally, to pay the Board of Pharmacy the  
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18 Professions Code section 125.3; and
- 19 4. Taking such other and further action as deemed necessary and proper.

20  
21  
22 DATED: 2/20/16

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

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