

**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

Case No. 5323

OAH No. 2016060952

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

(As to Respondent JEFF LUM 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 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
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
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**

OAH No. 2016060952

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Pharmacy Permit No. PHY 41280**

(As To Respondent JEFF LUM Only)

16 **and**

17 **JEFF LUM**
18 **219 East Olive Avenue**
19 **Fresno, California 93728**

19 **Pharmacist License No. RPH 42790**

20 Respondents.

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

24 **PARTIES**

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27 D. Harris, Attorney General of the State of California, by Kristina T. Jarvis, Deputy Attorney
28 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 his Pharmacy License.

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 his rights to contest those
12 charges and allegations.

13 12. Respondent understands that by signing this stipulation he enables the Board to issue
14 an order revoking his Pharmacy License 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 Pharmacist License No. RPH 42790 to Respondent Jeff
12 Lum is revoked. However, the revocation is stayed and Respondent is placed on probation for
13 four (4) years on the following terms and conditions.

14 1. **Obey All Laws**

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

16 Respondent shall report any of the following occurrences to the board, in writing, within
17 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, distributing, billing, or charging
27 for any drug, device or controlled substance.

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

1 2. **Report to the Board**

2 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, Respondent shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation. Failure to submit timely reports
6 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
7 in submission of reports as directed may be added to the total period of probation. Moreover, if
8 the final probation report is not made as directed, probation shall be automatically extended until
9 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 shall appear in person for interviews
12 with the board or its designee, at such intervals and locations as are determined by the board or its
13 designee. Failure to appear for any scheduled interview without prior notification to board staff,
14 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
15 the period of probation, shall be considered a violation of probation.

16 4. **Cooperate with Board Staff**

17 Respondent 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. **Continuing Education**

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

23 6. **Notice to Employers**

24 During the period of probation, Respondent shall notify all present and prospective
25 employers of the decision in case number 5323 and the terms, conditions and restrictions imposed
26 on Respondent by the decision, as follows:

27 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
28 Respondent undertaking any new employment, Respondent shall cause their direct supervisor,

1 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
2 tenure of employment) and owner to report to the board in writing acknowledging that the listed
3 individual(s) has/have read the decision in case number 5323, and terms and conditions imposed
4 thereby. It shall be Respondent's responsibility to ensure that their employer(s) and/or
5 supervisor(s) submit timely acknowledgment(s) to the board.

6 If Respondent works for or is employed by or through a pharmacy employment service,
7 Respondent must notify their direct supervisor, pharmacist-in-charge, and owner at every entity
8 licensed by the board of the terms and conditions of the decision in case number 5323 in advance
9 of the Respondent commencing work at each licensed entity. A record of this notification must
10 be provided to the board upon request.

11 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
12 (15) days of Respondent undertaking any new employment by or through a pharmacy
13 employment service, Respondent shall cause their direct supervisor with the pharmacy
14 employment service to report to the board in writing acknowledging that they has read the
15 decision in case number 5323 and the terms and conditions imposed thereby. It shall be
16 Respondent's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely
17 acknowledgment(s) to the board.

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

21 "Employment" within the meaning of this provision shall include any full-time,
22 part-time, temporary, relief or pharmacy management service as a pharmacist or any
23 position for which a pharmacist license is a requirement or criterion for employment,
24 whether the Respondent is an employee, independent contractor or volunteer.

25
26 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as
Designated Representative-in-Charge, or Serving as a Consultant**

27 During the period of probation, Respondent shall not supervise any intern pharmacist, be
28 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the

1 board nor serve as a consultant unless otherwise specified in this order (See term 18). Assumption
2 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

3 **8. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, Respondent shall pay to the
5 board its costs of investigation and prosecution in the amount of \$15,000.00. Respondent is
6 jointly and severally liable for this amount with Respondent Medicine Shoppe 485, pharmacy
7 permit number PHY 41280. Respondent shall make said payments as follows: either in a lump
8 sum within 60 days after the effective date of the Order, or in a payment plan approved by the
9 Board. If such payment plan is approved, these costs must be paid in full no later than twelve
10 (12) months prior to the termination of probation. Probation will not terminate until these costs
11 are paid in full.

12 There shall be no deviation from this schedule absent prior written approval by the board or
13 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
14 probation.

15 The filing of bankruptcy by Respondent shall not relieve Respondent of their responsibility
16 to reimburse the board its costs of investigation and prosecution.

17 **9. Probation Monitoring Costs**

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

22 **10. Status of License**

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

26 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
27 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
28 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this

1 probation not previously satisfied.

2 **11. License Surrender While on Probation/Suspension**

3 Following the effective date of this decision, should Respondent cease practice due to
4 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
5 Respondent may tender their license to the board for surrender. The board or its designee shall
6 have the discretion whether to grant the request for surrender or take any other action it deems
7 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
8 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
9 record of discipline and shall become a part of the Respondent's license history with the board.

10 Upon acceptance of the surrender, Respondent shall relinquish their pocket and wall license
11 to the board within ten (10) days of notification by the board that the surrender is accepted.
12 Respondent may not reapply for any license from the board for three (3) years from the effective
13 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
14 of the date the application for that license is submitted to the board, including any outstanding
15 costs.

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

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

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

25 **13. Tolling of Probation**

26 Except during periods of suspension, Respondent shall, at all times while on probation, be
27 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
28 month during which this minimum is not met shall toll the period of probation, i.e., the period of

1 probation shall be extended by one month for each month during which this minimum is not met.
2 During any such period of tolling of probation, Respondent must nonetheless comply with all
3 terms and conditions of probation.

4 Should Respondent, regardless of residency, for any reason (including vacation) cease
5 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
6 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and
7 must further notify the board in writing within ten (10) days of the resumption of practice. Any
8 failure to provide such notification(s) shall be considered a violation of probation.

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

12 "Cessation of practice" means any calendar month during which Respondent is
13 not practicing as a pharmacist for at least 40 hours, as defined by Business and
14 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
15 month during which Respondent is practicing as a pharmacist for at least 40 hours as
16 a pharmacist as defined by Business and Professions Code section 4000 et seq.

17 **14. Violation of Probation**

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

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

1 extended until the petition to revoke probation or accusation is heard and decided.

2 **15. Completion of Probation**

3 Upon written notice by the board or its designee indicating successful completion of
4 probation, Respondent's license will be fully restored.

5 **16. Additional Continuing Education**

6 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
7 board or its designee, for prior approval, an appropriate program of additional continuing
8 education related to Pharmacy Law, Corresponding Responsibility, and Prescription Drug Abuse
9 Prevention. The program of additional continuing education shall consist of at least twenty-four
10 (24) hours, which shall be completed during the term of probation at Respondent's own expense.
11 All additional continuing education shall be in addition to, and shall not be credited toward,
12 continuing education (CE) courses used for license renewal purposes.

13 Failure to timely submit or complete the approved additional continuing education shall be
14 considered a violation of probation. The period of probation will be automatically extended until
15 such additional continuing education is successfully completed and written proof, in a form
16 acceptable to the board, is provided to the board or its designee.

17 Following the completion of each course, the board or its designee may require the
18 Respondent, at their own expense, to take an approved examination to test the Respondent's
19 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
20 this failure shall be considered a violation of probation. Any such examination failure shall
21 require Respondent to take another course approved by the board in the same subject area.

22 **17. No New Ownership of Licensed Premises**

23 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
24 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
25 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
26 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
27 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
28 or hereinafter licensed by the board, Respondent may continue to serve in such capacity or hold

1 that interest, but only to the extent of that position or interest as of the effective date of this
2 decision. Violation of this restriction shall be considered a violation of probation.

3 **18. Consultant for Owner or Pharmacist-In-Charge**

4 During the period of probation, Respondent shall not supervise any intern pharmacist or
5 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
6 charge. However, if during the period of probation Respondent serves as a pharmacist-in-charge,
7 Respondent shall retain an independent consultant at their own expense who shall be responsible
8 for reviewing pharmacy operations on a monthly basis for compliance by Respondent with state
9 and federal laws and regulations governing the practice of pharmacy and for compliance by
10 Respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist
11 licensed by and not on probation with the board and whose name shall be submitted to the board
12 or its designee, for prior approval, within thirty (30) days of the effective date of this decision.
13 Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of
14 which he is not the sole owner. Failure to timely retain, seek approval of, or ensure timely
15 reporting by the consultant shall be considered a violation of probation. Upon written approval of
16 the Board or its designee, the frequency of consultant review may be reduced to a quarterly basis.

17 **19. Ethics Course**

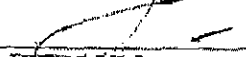
18 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
19 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its
20 designee. Failure to initiate the course during the first year of probation, and complete it within
21 the second year of probation, is a violation of probation. The ethics course shall be in addition to,
22 and shall not be credited toward, continuing education (CE) courses used for license renewal
23 purposes.

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

26 **ACCEPTANCE**

27 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
28 discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it

1 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
2 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
3 of the Board of Pharmacy.

4 DATED: 9/19/2016 
5 JEFF LUM
6 *Respondent*

7 **APPROVAL AS TO FORM AND CONTENT**

8 I have read and fully discussed with Respondent Jeff Lum the terms and conditions and
9 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
10 form and content.

11 DATED: _____
12 GREGORY P. MATZEN
13 *Attorney for Respondent*

14 **ENDORSEMENT**

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

17 Dated: _____ Respectfully submitted,
18 KAMALA D. HARRIS
19 *Attorney General of California*
20 JANICE K. LACHMAN
Supervising Deputy Attorney General.

21 _____
22 KRISTINA T. JARVIS
23 *Deputy Attorney General*
Attorneys for Complainant

24
25
26
27 SA2014118307
28 12404699.doc

1 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
2 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
3 of the Board of Pharmacy.

4 DATED: _____

5 JEFF LUM
6 Respondent

7 **APPROVAL AS TO FORM AND CONTENT**

8 I have read and fully discussed with Respondent Jeff Lum the terms and conditions and
9 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
10 form and content.

11 DATED: _____

9/16/16

12 GREGORY P. MATZEN
13 Attorney for Respondent

14 **ENDORSEMENT**

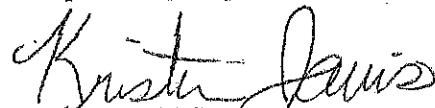
15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Board of Pharmacy.

17 Dated: _____

9/16/16

Respectfully submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 JANICE K. LACHMAN
21 Supervising Deputy Attorney General.

22 
23 KRISTINA T. JARVIS
24 Deputy Attorney General
25 Attorneys for Complainant

26
27 SA2014118307
28 12404699.doc

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
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA. 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5323

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

ACCUSATION

23 Complainant alleges:

24 **PARTIES**

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

27 ///
28 ///

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

SA2014118307
11619131.docx