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

In the Matter of the Accusation Against: **MARC 1 DRUGS, INC.** **DBA PAYLESS PHARMACY** **PIC MARK T. HOANG,** **OWNER/PRESICENT** Original Permit Number: PHY 50705 and **MARC T. HOANG** Pharmacist License Number: RPH 50411, Respondents.	Case No. 5470 OAH No. 2016100189

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical changes are made:

- page one, paragraph 3: The respondents name should read "Marc T. Hoang", and not "March T. Hoang".
- page two, paragraph 3(b), the citation number should read "2013 60878", and not "2013 60678"
- page two, paragraph #4, the date should read "May 31, 2014" and not "May 31, 2013"
- page eleven, B. license number should read "PHY 50705" and not "PHY 507".

The technical changes made above do not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on August 9, 2017.

It is so ORDERED on July 10, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARC 1 DRUGS, INC. DBA PAYLESS PHARMACY PIC MARK T. HOANG, OWNER/PRESIDENT Original Permit Number PHY 50705 and MARC T. HOANG Pharmacist License Number RPH 50411, Respondents.	Case No. 5470 OAH No. 2016100189

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on May 9 and 10, 2017.

Nancy A. Kaiser, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer, Board of Pharmacy (Board).

Tony J. Park, Attorney at Law, represented March T. Hoang (Respondent Hoang) and Marc 1 Drugs, Inc. doing business as Payless Pharmacy (Respondent Pharmacy or Rosemead Location), Respondent Hoang, Pharmacist in Charge, Owner/President, collectively referred to as Respondents.

Complainant seeks to discipline Respondents' licenses based on allegations that they failed to maintain and provide the Board with all requested records of sale, acquisition, and disposition of dangerous drugs. Respondents did not dispute many of the allegations, but provided evidence in explanation, mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on May 10, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusation in her official capacity.

2. On September 16, 2011, the Board issued Original Permit Number PHY 50705 to Respondent Pharmacy at 8841 Valley Boulevard, Rosemead, California. Respondent Hoang has been the President, 100 percent shareholder, and Pharmacist-in-Charge of Respondent Pharmacy since September 16, 2011. The license has not been previously disciplined, and expires on September 1, 2017, unless renewed.

3. a. On September 4, 1998, the Board issued Original Pharmacist License Number RPH 50411 to Respondent Hoang. His address of record is 8841 Valley Boulevard, Rosemead, California, and the license expires on January 31, 2018, unless renewed.

b. On April 11, 2014, the Board issued Citation 2013 60678 to Respondent Hoang for violation of Business and Professions Code[1] section 4110, subdivision (a) (operating a pharmacy without a permit). The facts and circumstances underlying the Citation are that Respondent Hoang operated a pharmacy located at 1118 South Garfield Avenue, Alhambra, California (Alhambra Location) for one day after the license had expired. He had applied for the renewal license, but had not received the new license prior to the day in question. He was issued a fine of $1,500, which he paid.

The Board's Audit

4. On May 31, 2013, the Board received an anonymous complaint about Respondents' prescription practices, including complaints about the filling of prescriptions for Lidoderm Patch 5% (Lidoderm). Lidoderm is a brand name medication containing the anesthetic lidocaine, which is used to relieve the pain associated with shingles. The medication requires a prescription. It is typically shipped by the manufacturer in boxes containing 30 patches each.

5. Board Inspector Sarah Bayley (Bayley) was assigned to investigate the complaint. As part of her investigation, Inspector Bayley first focused on the period of January 1 to June 1, 2013 to audit Respondents' dispensation of Lidoderm. She obtained purchasing

[1] All further statutory references are to the Business and Professions Code.

records for the distributor who supplied most of Respondent's Lidoderm medication, AmerisourceBergen, one of the largest distributors in the industry. Once she obtained the purchasing records, Inspector Bayley went to the Rosemead Location to review Respondents' records.

6. On November 18 and December 4, 2014, Inspector Bayley obtained records from Respondents showing the sale of Lidoderm to clients at the Rosemead Location, which records are referred to in the profession as disposition records.

7. A comparison of the purchasing records from AmerisourceBergen and the disposition records from the Rosemead Location showed a discrepancy between the number of boxes acquired and the number dispensed. Whereas the distributor's records showed acquisition of 222 boxes, or 6,660 patches, Respondent's records showed disposition of 336 boxes, or 10,080 patches. Thus, Respondents had dispensed 114 more boxes, or 3,420 patches than purchased.

8. In order to determine if the discrepancy was part of a pattern, Inspector Bayley compared similar acquisition and disposition records for the period of November 1 to December 31, 2012. She documented similar discrepancies: 70 boxes (2,100 patches) were acquired and 122 boxes (3,660 patches) were sold, or a difference of 52 boxes (1,560) patches.

9. On January 13, 2015, Inspector Bayley discussed her findings with Respondent Hoang, and asked him to explain the reason(s) for the discrepancies. She also asked for Lidoderm dispensing records for the period of June 1, 2013 to January 14, 2015 to determine if the discrepancies persisted over a longer period of time.

10. On January 16, 2015, Respondent Hoang sent Inspector Bayley an email in which he provided three "possible reasons" for the discrepancies: (1) the Rosemead location is used as the training location for new employees, externs and volunteers who may not be as familiar with all the documentation requirements and procedures; (2) the failure of students to remove information about prescriptions from a "dummy" or training patient profile file; and (3) Lidoderm was on back order for several months, which may have led to duplicate refills. (Exh. 14, at p. 2.)

11. After receiving dispensing records from Respondents for the period of June 1, 2013 to January 14, 2015, Inspector Bayley obtained additional purchasing records from AmerisourceBergen to analyze the acquisition and disposition of Lidoderm at the Rosemead Location. As before, Inspector Bayley found that Respondents dispensed more Lidoderm (907 boxes, or 27,210 patches) than they acquired (839 boxes, or 25,170 patches), a discrepancy of (68 boxes, or 2,040 patches).

Respondent's Evidence

12. a. After researching the matter with greater care in preparation for the hearing, Respondents believe that the discrepancies are the result of dispensing Lidoderm at the Rosemead Location purchased at one of the other locations and of having purchased small quantities of Lidoderm from smaller suppliers. If out of stock of a medication at a particular location, Respondents typically obtained the medication from another location instead of having the patients wait for the first pharmacy to order the medication from a supplier.

b. Respondents produced records which show that 3,275 boxes of Lidoderm, or 98,250 patches, were purchased for all four pharmacies from AmerisourceBergen for the period of November 1, 2012 to January 13, 2015, and that 3,290 boxes or 98,700 patches, were dispensed from all four pharmacies during the same period. This system-wide analysis shows a smaller discrepancy of 15 boxes, or 450 patches.

c. It was not established at the hearing whether the discrepancy between the quantity of Lidoderm acquired and the quantity dispensed was the result of not taking into account the purchases from suppliers other than AmerisourceBergen, as Respondents did not present records of such purchases.

13. Respondent Hoang conceded that Respondents' record-keeping practices were deficient. Not only was he not able to locate acquisition records involving smaller Lidoderm suppliers, but he did not maintain records of transfers between the four pharmacies. He incorrectly believed that transfer records were not required for businesses owned by the same individual. With the assistance of a consultant, Micah Hata (Hata), Respondents have created new written policies to improve their record-keeping procedures.

14. Hata is an Associate Professor and Residency Program Director for Community Pharmacies at Western University School of Pharmacy. He is in regular contact with community pharmacies as part of his duties, and has experience assisting such pharmacies comply with Pharmacy law. Hata has agreed to regularly consult with Respondents, and held his first meeting with Respondents' staff in March 2017. Hata reviewed the policies and procedures of Respondent Pharmacy, and did not see anything that would give him concern about the safe operation of the pharmacy. However, necessary process and record-keeping policies and procedures were not in place and most of those that were in place were outdated. Inventory records were disorganized and incomplete.

15. Hata made several suggestions for improving record keeping, which Respondents have agreed to implement. For instance, in a Corrective Action Plan (CAP) executed on March 27, 2017, Respondents agreed to clearly identify "will call" and "fill on arrival" prescriptions and to return prescriptions not picked up by customers within a 14-day window. In the same CAP, Respondents agreed to create new policies and procedures for the

monitoring of prescriptions that cannot be readily filled. Hata agreed to continue his review of Respondents' policies and to make additional recommendations.

16. Respondent Hoang is a busy businessman. He owns four Payless pharmacies, which include the Rosemead Location and the Alhambra Locations, and four restaurants. Respondent Hoang was not an active pharmacist-in-charge, and was not typically present at the Rosemead Location. He relied on his staff to operate the pharmacy. To correct this deficiency, Respondent Hoang plans to hire a pharmacist in charge for the Rosemead Location.

17. The Board has incurred $5,402.50 in the form of Attorney General charges in its investigation and enforcement of this matter, which costs are reasonable.

LEGAL CONCLUSIONS

1. Section 4301 authorizes the Board to take action against its licensees who engage in unprofessional conduct. Unprofessional conduct includes "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the [Board] or any other state or federal regulatory agency." (§ 4301, subd. (o).)

2. Section 4081, subdivision (a), provides: "All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

3. Section 4105 contains the following requirements: "(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form. [¶] . . . [¶] (f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. . . ."

4. Section 4169, subdivision (a), states that "A person or entity shall not do any of the following: [¶] . . . [¶] (5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years."

5. In failing to provide records to explain the discrepancies uncovered by the Board's audit, as set forth in factual finding numbers 5 through 13, Respondents failed to provide the Board all records of sale, acquisition, and disposition of dangerous drugs. Therefore, grounds exist to discipline Respondents' licenses for unprofessional conduct pursuant to sections 4081, subdivision (a), 4105, subdivisions (a) and (f), and 4301, subdivision (o), and California Code of Regulations, title 16, section 1718.

6. In failing to maintain records to explain the discrepancies uncovered by the Board's audit, as set forth in factual finding numbers 5 through 13, Respondents failed to maintain all records of sale, acquisition, and disposition of dangerous drugs. Therefore, grounds exist to discipline Respondents' licenses for unprofessional conduct pursuant to sections 4169, subdivision (a)(5), and 4301, subdivision (o).

7. Cause exists pursuant to section 125.3 to order Respondents, jointly and severally, to pay the Board's costs of investigation and enforcement in this matter, in the sum of $5,402.50, by reason of factual finding number 17 and legal conclusion numbers 1 through 6.

8. All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Board's Disciplinary Guidelines (Cal. Code Regs., tit. 16, § 1760). Respondents did not deny that they were unable to provide documentation to accurately account for all the acquired Lidoderm. Respondents conceded that their record keeping was deficient. Respondents' failure to keep inter-pharmacy transfer documents made the discrepancies appear larger than they were. Their inability to produce records of purchases from smaller suppliers left the discrepancy unexplained. However, there is no evidence that the discrepancies are the result of fraudulent or other intentional misconduct. Respondents have accepted responsibility for the record keeping errors and are taking steps to prevent their recurrence. Respondents have enlisted the assistance of Hata, an independent, credible, and knowledgeable source, to aid them in the process. In light of the relatively minor violations established and Hata's testimony about the safety of Respondents' operations, actual suspension of Respondents' licenses is not necessary for the protection of the public. Accordingly, the order that follows is necessary and sufficient for the protection of the public.

ORDER

A. License number RPH 50411 to Respondent Hoang is revoked; however, the revocation is stayed and Respondent Hoang's license is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws.** Respondent Hoang shall obey all state and federal laws and regulations.

Respondent Hoang shall report any of the following occurrences to the Board, in writing, within72 hours of such occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; (4) discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent Hoang's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report any such occurrence shall be considered a violation of probation.

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

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

4. **Cooperate with Board Staff.** Respondent Hoang shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent Hoang's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. **Continuing Education.** Respondent Hoang shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as required by the Board or its designee.

6. **Notice to Employers.** During the period of probation, Respondent Hoang shall notify all present and prospective employers of the Decision in case number 5470 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this Decision, and within 15 days of Respondent Hoang undertaking any new employment, Respondent Hoang shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in case number 5470 and the terms and conditions imposed thereby. It shall be Respondent Hoang's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If Respondent Hoang works for or is employed by or through a pharmacy employment service, Respondent Hoang must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Decision in case number 5470 in advance of Respondent Hoang commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this Decision, and within 15 days of Respondent Hoang undertaking any new employment by or through a pharmacy employment service, Respondent Hoang shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the Decision in case number 5470 and the terms and conditions imposed thereby. It shall be Respondent Hoang's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

7. **No Supervision of Interns, Serving as Pharmacist-in-Charge, Serving as Designated Representative-in-Charge, or Serving as a Consultant**. During the period of probation, Respondent Hoang shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order or authorized by the Board. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. **Reimbursement of Board Costs**. As a condition precedent to successful completion of probation, Respondent Hoang shall pay to the Board its costs of investigation and prosecution in the amount of $5,402.50. Respondent Hoang shall make payment within 60 days of the effective date of the Board's decision in this matter. There shall be no deviation

from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by Respondent Hoang shall not relieve Respondent Hoang of his responsibility to reimburse the Board its costs of investigation and prosecution.

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

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

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

11. **License Surrender While on Probation/Suspension.** Following the effective date of this Decision, should Respondent Hoang cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent Hoang may tender his pharmacist license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent Hoang will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of Respondent Hoang's license history with the Board.

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

12. **Notification of a Change in Name, Residence Address, Mailing Address or Employment.** Respondent Hoang shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known.

Respondent Hoang shall further notify the Board in writing within 10 days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. **Tolling of Probation.** Except during periods of suspension or as otherwise authorized by the Board, Respondent Hoang shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent Hoang must nonetheless comply with all terms and conditions of probation.

Should Respondent Hoang, regardless of residency, for any reason (including vacation) cease working as a pharmacist for a minimum of 80 hours per calendar month in California, Respondent Hoang must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which Respondent Hoang is not working for at least 80 hours as a pharmacy technician, as defined in section 4115. "Resumption of work" means any calendar month during which Respondent Hoang is working as a pharmacist for at least 80 hours as a pharmacy technician as defined by section 4115.

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

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

15. **Completion of Probation.** Upon written notice by the Board indicating successful completion of probation, Respondent Hoang's pharmacy technician license will be fully restored.

B. License number PHY 507, issued to Respondent Marc 1 Drugs, Inc. dba Payless Pharmacy is revoked; however, the revocation is stayed and Respondent Pharmacy is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws.** Respondent Hoang, as owner of Respondent Pharmacy, shall obey all state and federal laws and regulations.

Respondent Hoang shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; (4) discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent Hoang's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report any such occurrence shall be considered a violation of probation.

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

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

4. **Cooperate with Board Staff.** Respondent Hoang shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent Hoang's compliance with the terms and conditions of his probation. Failure to cooperate shall

be considered a violation of probation.

5. **Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, Respondent Hoang shall pay to the Board its costs of investigation and prosecution in the amount of $5,402.50. Respondent Hoang shall make payment within 60 days of the effective date of the Board's decision in this matter. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by Respondent Hoang shall not relieve Respondent Hoang of his responsibility to reimburse the Board its costs of investigation and prosecution.

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

7. **Status of License.** Respondent Hoang shall, at all times while on probation, maintain current licensure with the Board. If Respondent Hoang submits an application to the Board, and the application is approved, for a change of location, change of permit or change of ownership, the Board shall retain continuing jurisdiction over the license, and Respondent Pharmacy shall remain on probation as determined by the Board. Failure to maintain current licensure shall be considered a violation of probation.

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

8. **License Surrender While on Probation/Suspension.** Following the effective date of this Decision, should Respondent Hoang discontinue business, Respondent Hoang may tender the premises license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent Pharmacy will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent Hoang shall relinquish the premises wall and renewal license to the Board within ten days of notification by the Board that the surrender is accepted. Respondent Hoang shall further submit a completed Discontinuance of Business form according to Board guidelines and shall notify the Board of the records inventory transfer. Respondent Hoang shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to

ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent Hoang shall provide a copy of the written notice to the Board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding 60 days.

9. **Notice to Employees.** Respondent Hoang shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Hoang shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, Respondent Hoang shall submit written notification to the Board, within 15 days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the Board shall be considered a violation of probation.

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

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

11. **Posted Notice of Probation.** Respondent Hoang shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation. Respondent Hoang shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity. Failure to post such notice shall be considered a violation of probation.

12. **Violation of Probation.** If Respondent Hoang has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent

Pharmacy's license, and probation shall be automatically extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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

13. **Completion of Probation.** Upon written notice by the Board or its designee indicating successful completion of probation, Respondent Pharmacy's license will be fully restored.

DATED: 6/2/17

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **MARC 1 DRUGS, INC. DBA PAYLESS PHARMACY** **PIC MARC T. HOANG, OWNER/PRESIDENT** 8841 Valley Blvd Rosemead, CA 91770 **Original Permit Number PHY 50705** and **MARC T. HOANG** 8841 Valley Blvd Rosemead, CA 91770 **Pharmacist License Number RPH 50411** Respondents.	Case No. 5470 **ACCUSATION**

Complainant alleges:

PARTIES

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

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

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

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

JURISDICTION

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

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

6. Section 4302 of the Code states:

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

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

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

8. Section 4300.1 of the Code states:

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

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STATUTORY AUTHORITY

9. Section 4301 of the Code states:

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

. . .

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

10. Section 4022 of the Code states:

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

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

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

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

11. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices [defined in Section 4022] shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or

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

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

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

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

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

. . .

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

. . .

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

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

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

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

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

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

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

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

. . .

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

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

"Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

STATE REGULATORY AUTHORITY

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

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332."

COST RECOVERY

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

FACTUAL SUMMARY

18. On or about May 31, 2014, the federal Drug Enforcement Administration, Los Angeles, forwarded an email to the Board from an anonymous complainant. The complainant alleged, inter alia, that Respondent Payless Pharmacy billed patients' health insurance companies for Lidoderm[1] and other brand named prescription medications, but did not dispense the medication to the patients. Instead, Respondent Payless Pharmacy waived copayments of prescription medications that a patient needed, in exchange for billing the Lidoderm and other medications that the patient did not need, to the patient's insurance company or allowed patients to trade these prescriptions for over-the-counter products at half and sometimes one third the acquisition price of the brand name medication prescribed. This arrangement would enable the pharmacy to keep the money paid by the patients' insurance for the prescribed medication without

[1] Lidoderm 5% patch requires a prescription. It is used for relieving pain associated with herpes zoster (shingles). Lidoderm patch is a local anesthetic. It works by stopping nerves from transmitting painful impulses to the brain.

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

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional conduct - Failure to Provide Records)

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

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

SECOND CAUSE FOR DISCIPLINE

(Unprofessional conduct - Failure to Maintain Records)

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

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

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

OTHER MATTERS

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

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

DISCIPLINARY CONSIDERATION

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

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PRAYER

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

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

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

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

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

5. Ordering Marc 1 Drugs, Inc. dba Payless Pharmacy and Marc T. Hoang to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7/30/16

Virginia Herold

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

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