

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

**In the Matter of the Petitions for Early Termination of  
Probation by:**

**JADINE CELINA MAH, Pharm.D.**

**Pharmacist License No. RPH 45475**

**and**

**I.V. FAMILY PHARMACY, INC., dba HOPE PHARMACY**

**Pharmacy Permit No. PHY 48589**

**Case No. 5530**

**OAH No. 2021050587**

**DECISION**

This matter was heard by video conference before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on May 27, 2021. Jonathan Lew, Administrative Law Judge, Office of Administrative Hearings (OAH), presided at the hearing.

Kristina Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Jadine C. Mah, Pharm.D., appeared on her own behalf, as well for I.V. Family Pharmacy, Inc., doing business as Hope Pharmacy.

Evidence was received, the record was closed, and the matter was submitted for decision on May 27, 2021.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. On August 12, 1992, the Board issued petitioner Pharmacist License No. RPH 45475 (license). Petitioner's license will expire on July 31, 2022, unless renewed or revoked. On May 1, 2007, the Board issued Pharmacy Permit No. PHY 48589 (permit), to I.V. Family Pharmacy, Inc., doing business as Hope Pharmacy. The permit will expire on May 1, 2022, unless renewed or revoked.

2. On September 16, 2016, complainant Virginia K. Herold, a former Executive Officer for the Board, issued an Accusation against petitioners. Petitioner was either the pharmacist-in-charge or interim pharmacist-in-charge of Hope Pharmacy from May 1, 2007, to present. Complainant alleged that petitioner, as part owner and the pharmacist-in-charge of Hope Pharmacy, violated laws and regulations governing the practice of pharmacy. The specific violations included failure to safely and properly prepare, maintain, secure and distribute drugs; failure to maintain records of acquisition, disposition, and current drug inventory; and failure to have in place and to maintain theft and impairment policies. These violations related to petitioner's failure

to account for the loss of 16,919 tablets of hydrocodone/acetaminophen (5/500 mg), 19,043 ml's of promethazine with codeine, and 16,814 tablets of hydrocodone/acetaminophen (10/325 mg) between October 26, 2011, and May 7, 2014. Petitioner admitted to the truth of each and every allegation in the Accusation.

3. On May 30, 2017, the Board issued its Decision and Order by which terms petitioners' licenses and permits were revoked, stayed and placed on probation for five years, subject to various terms and conditions, including to obey all laws, submit quarterly reports, not supervise interns, not serve as a pharmacist-in-charge for any pharmacy other than Hope Pharmacy, or as a consultant, reimburse the Board \$7,755.25 for investigation and enforcement costs, complete remedial education, and complete a Board-approved ethics course. The Board's Decision and Order was effective on June 29, 2017.

### **Petitions for Early Termination of Probation**

4. On June 23, 2020, petitioner signed and thereafter filed with the Board a Petition for Early Termination of Probation (Petition), for both pharmacist and pharmacy licenses. Petitioner has not previously applied for termination of her probation. Petitioner submitted in support of her Petition documentation of compliance, inspection report, psychological evaluation, community outreach, five letters of recommendation, and proof of completing continuing education. In her Petition, as well as her testimony at hearing, petitioner explained the circumstances surrounding the events that gave rise to the discipline imposed on her license and her rehabilitation and corrective efforts from that time.

5. Petitioner is currently in compliance with the terms and conditions of her Board probation. Petitioner has completed nearly four years of her probation term, which ends on or about June 28, 2022. She completed the required

remedial/continuing education and ethics course, and paid the ordered investigation and enforcement costs. Petitioner is compliant with all probation terms and conditions.

6. Petitioner explained that in 2014 she made changes and took corrective action when she became aware of the matters that led to disciplinary action against her pharmacist license and pharmacy permit. Three employees were implicated in stealing controlled substances. She notified both the Drug Enforcement Agency (DEA) and the Board that Hydrocodone (5/500 mg) and Promethazine with Codeine were stolen. She was unaware that Hydrocodone (10/325 mg) was also taken until after the DEA conducted its investigation.

Petitioner has implemented a number of pharmacy protocols that she believes will prevent recurrence of the violations in this case. She detailed the following measures currently in place:

After filling controlled prescriptions, II – IV, the back count is performed and the physical quantity should match the perpetual quantity in the computer system. After each fill, the person filling must document the amount remaining and make sure it matches what [s/c] the computer system's inventory. This is done on a continuous basis. Any differences are investigated as soon as possible to determine the source of the problem. We use all the tools available to us; cameras, perpetual inventory history, Eyecon (counting machine) data, interviews, invoices, etc.

The reconciliation for C2's are performed every 3 months as required by law (except we will go 6 months during this

Covid crisis). This further provides another way to catch a potential mistake that may not have been discovered sooner.

7. Petitioner noted that being on probation has helped her ensure she has proper procedures in place so that controlled substance drug inventory is accurately maintained, both on the receiving and dispensing/disposition end. In addition, her completing the quarterly Community Self-Assessment has helped her stay current on all laws and regulations, and ensuring that the pharmacy is compliant. She now has available a policy manual for new employees.

8. Petitioner submitted documents and testified regarding the continuing education efforts she has undertaken. She is a member of the National Community Pharmacists Association and the California Pharmacists Association. Although there is no local pharmacy association in the Imperial Valley, she goes to Wholesaler Trade shows, attends presentations sponsored by drug companies, and takes advantage of continuing education courses to keep abreast of pharmacy developments. Petitioner is actively engaged in community service. She volunteers as a pharmacist on medical teams in Baja California, and has served the homeless in Calexico. She is fluent in Spanish and Chinese and this has greatly assisted her ability to serve a community that is 95 percent Spanish speaking. Hope Pharmacy has approximately 15 employees, including two full-time pharmacists. It dispenses approximately 500 prescriptions per day. From January 2021, it dispensed COVID-19 vaccines daily for three months.

9. Petitioner takes full responsibility for the conditions in Hope Pharmacy that led to disciplinary action. She was unaware that controlled substances were being taken by employees for personal use or sale. She acknowledges past disorganization

of the pharmacy, and noted that her sister being diagnosed with cancer may have contributed to her inattentiveness to the disorganization.

Being on probation prevents petitioner from supervising pharmacy interns. She would like to do so in order to expand Hope Pharmacy's ability serve more members of the community. Petitioner is requesting early termination of her probation so that she can return to full and unrestricted pharmacy practice. She believes early termination of probation "would allow me to focus and devote more of my time and energy to doing what I am meant to do which is to help and serve my patients and community whole-heartedly."

Petitioner fully acknowledges and accepts responsibility for past deficiencies, and has measures in place to meet regulatory compliance standards for acquisition, disposition and current drug inventory of controlled substances. She believes full restoration of her license and pharmacy permit will not pose any appreciable risk of repetition of past errors.

## **Recommendations**

10. Pursuant to Business and Professions Code section 4309, subdivision (b),<sup>1</sup> petitioner submitted five letters of recommendation, four of which were verified. A sample of letter comments follow:

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<sup>1</sup> Business and Professions Code section 4309, subdivision (b), provides:

The petition shall state any facts required by the Board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the

a. Phillip Evans is a licensed pharmacist who has worked with petitioner at Hope Pharmacy as a full-time dispensing pharmacist from April 2020. He confirmed that petitioner keeps a "tight rein on our controlled inventory" and that stringent procedures are utilized daily in the ordering, stocking and storage of all controlled medications. He detailed a number of steps that are followed, including having all inventory received electronically into the perpetual inventory on hand, and having each controlled substance counted by a licensed technician, in his presence pursuant to a lawful prescription, and then double counted by him and the technician. He supports early termination of probation, noting that petitioner "strictly operates her pharmacy, confirming her ability to operate without a loss of controlled substances."

b. Elvis Atencio, Pharm.D., is a licensed pharmacist who has known petitioner for many years, and worked with her in the past in Calexico. Dr. Atencio is aware of the Board's disciplinary action and also the changes that petitioner has implemented at Hope Pharmacy. He supports early termination of probation, noting that "people that know her, work with her and her patients can see the changes made at Hope Pharmacy."

c. John A. Williams is a licensed pharmacist who is the pharmacist-in-charge at Solara Medical Supplies in Chula Vista. He has known petitioner since 2011, when he worked at Hope Pharmacy. He has the highest regard for her professional abilities and

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Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

was stunned to hear about the circumstances leading to Board discipline. Having since communicated with petitioner and staff at Hope Pharmacy, he supports early termination of her probation, noting how petitioner “has continued her efforts to exemplify the practice of pharmacy including continued community service and volunteer service.”

d. Sonia Baeza is a school teacher who has known petitioner for 40 years. The two are neighbors. She is aware of the Board’s disciplinary action. Ms. Baeza detailed petitioner’s many civic and charitable contributions over the years, noting how “her determination and perseverance to serve our economic and culturally diverse community is admirable.” She believes petitioner has learned from, rectified and grown from her mistakes and fully supports early termination of her probation.

## **Analysis**

11. Petitioner has completed nearly four years of her five-year Board probation. She is fully compliant with all terms and conditions of her probation, and now has measures in place to meet regulatory compliance standards for acquisition, disposition and current drug inventory of controlled substances. Petitioner has accepted full responsibility for past mistakes and failures to comply with the Board’s laws and regulations.

Being placed on Board probation has restricted petitioner’s ability to expand pharmacy services, particularly with regard to supervising pharmacy interns. She would like to focus and devote her full time and energy to her pharmacy practice, free of probation terms and conditions restricting her practice. Petitioner accepts full responsibility for past regulatory deficiencies, has demonstrated her ability to safely and responsibly manage controlled substances in her pharmacy, and is committed to

continuing practices to prevent any recurrence of events that led to her discipline in this case.

12. When all the evidence is considered, no further public interest will be served by continuing petitioner on probation. Petitioner demonstrated that she and Hope Pharmacy are capable of practicing as a pharmacist and pharmacy without restrictions, and without harm to the public.

## **LEGAL CONCLUSIONS**

1. In a proceeding for reinstatement of a license, including early termination of probation, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Business and Professions Code section 4309, subdivision (d), sets forth the following factors for consideration when the Board reviews a petition for early termination of probation:

- (1) All the activities of the petitioner since the disciplinary action was taken.
- (2) The offense for which the petitioner was disciplined.
- (3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

3. When all the relevant rehabilitation criteria set forth in Business and Professions Code section 4309, subdivision (d), are considered, petitioner established that it would be consistent with the public health, safety, and welfare to terminate her and Hope Pharmacy's probation.

### **ORDER**

1. The Petition for Early Termination of Probation of Jadine Celina Mah, Pharm.D., Pharmacist License No. RPH 45475, is GRANTED.

2. The Petition for Early Termination of Probation of I.V. Pharmacy, Inc., dba Hope Pharmacy, Pharmacy Permit No. PHY 48589, is GRANTED.

This Decision shall become effective at 5:00 p.m. on November 24, 2021.

It is so ORDERED on October 25, 2021.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.  
Board President

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

In the Matter of the Accusation Against:

**I. V. FAMILY PHARMACY, INC.,  
DBA HOPE PHARMACY  
420 Heffernan Avenue, Suite A  
Calexico, CA 92231  
Pharmacy Permit No. PHY 48589**

**JADINE CELINA MAH  
1101 Emil Hashem Street  
Calexico, CA 92231  
Pharmacist License No. RPH 45475**

**JOSE CAMILO MELENDEZ  
911 Herrernan Avenue  
Calexico, CA 92231  
Pharmacy Technician Registration No. TCH 52678**

**ONOFRE MARROQUIN  
401 E. 8<sup>th</sup> Street  
Holtville, CA 92250  
Pharmacy Technician Registration No. TCH 78446**

Respondents.

Case No. 5530

OAH No. 2017020570

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER (I.V.  
FAMILY PHARMACY, INC., DBA  
HOPE PHARMACY ONLY)**

**DECISION AND ORDER**

The attached Stipulated Settlement of License and 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 June 29, 2017.

It is so ORDERED on May 30, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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Amy Gutierrez, Pharm.D.  
Board President

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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **I.V. FAMILY PHARMACY, INC.**  
13 **DBA HOPE PHARMACY**  
14 **420 Heffernan Avenue, Suite A**  
**Calexico, CA 92231**

15 **Pharmacy Permit No. PHY 48589**

16 **JADINE CELINA MAH**  
17 **1101 Emil Hashem Street**  
**Calexico, CA 92231**

18 **Pharmacist License No. RPH 45475**

19 **JOSE CAMILO MELENDEZ**  
20 **911 Herrernan Avenue**  
**Calexico, CA 92231**

21 **Pharmacy Technician Registration No. TCH**  
22 **52678**

23 **ONOFRE MARROQUIN**  
24 **401 E. 8<sup>TH</sup> Street**  
**Holtville, CA 92250**

25 **Pharmacy Technician Registration No. TCH**  
26 **78446**

27  
28 Respondents.

Case No. 5530

OAH No. 2017020570

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER AS TO I.V.  
FAMILY PHARMACY, INC.  
DBA HOPE PHARMACY ONLY**

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

3 PARTIES

4 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
5 (Board). She brought this action solely in her official capacity and is represented in this matter by  
6 Xavier Becerra, Attorney General of the State of California, by Marichelle S. Tahimic, Deputy  
7 Attorney General.

8 2. Respondent I.V. Family Pharmacy, Inc., dba Hope Pharmacy (Respondent) is  
9 represented in this proceeding by attorney Elizabeth Brady, whose address is: 8880 Rio San  
10 Diego, Suite 800, San Diego, CA 92108-1642.

11 3. On or about May 1, 2007, the Board issued Pharmacy Permit No. PHY 48589 to I.V.  
12 Family Pharmacy, Inc., dba Hope Pharmacy (Respondent). The Pharmacy Permit was in full  
13 force and effect at all times relevant to the charges brought in Accusation No. 5530, and will  
14 expire on May 1, 2018, unless renewed.

15 JURISDICTION

16 4. Accusation No. 5530 was filed before the Board, and is currently pending against  
17 Respondent. The Accusation and all other statutorily required documents were properly served  
18 on Respondent on September 30, 2016. Respondent timely filed its Notice of Defense contesting  
19 the Accusation.

20 5. A copy of Accusation No. 5530 is attached as exhibit A and incorporated herein by  
21 reference.

22 ADVISEMENT AND WAIVERS

23 6. Respondent has carefully read, fully discussed with counsel, and understands the  
24 charges and allegations in Accusation No. 5530. Respondent has also carefully read, fully  
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
26 Order.

27 7. Respondent is fully aware of its legal rights in this matter, including the right to a  
28 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

1 the witnesses against them; the right to present evidence and to testify on its own behalf; the right  
2 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
3 documents; the right to reconsideration and court review of an adverse decision; and all other  
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

5 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
6 every right set forth above.

7 CULPABILITY

8 9. Respondent admits the truth of each and every charge and allegation in Accusation  
9 No. 5530.

10 10. Respondent agrees that its Pharmacy Permit is subject to discipline and it agrees to be  
11 bound by the Board's probationary terms as set forth in the Disciplinary Order below.

12 CONTINGENCY

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

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

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
2 writing executed by an authorized representative of each of the parties.

3 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
4 the Board may, without further notice or formal proceeding, issue and enter the following  
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 48589 issued to Respondent  
8 I.V. Family Pharmacy, Inc., dba Hope Pharmacy is revoked. However, the revocation is stayed  
9 and Respondent is placed on probation for five (5) years on the following terms and conditions.

10 **1. Obey All Laws**

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

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

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

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

25 **2. Report to the Board**

26 Respondent owner shall report to the board quarterly, on a schedule as directed by the board  
27 or its designee. The report shall be made either in person or in writing, as directed. Among other  
28 requirements, respondent owner shall state in each report under penalty of perjury whether there

1 has been compliance with all the terms and conditions of probation. Failure to submit timely  
2 reports in a form as directed shall be considered a violation of probation. Any period(s) of  
3 delinquency in submission of reports as directed may be added to the total period of probation.  
4 Moreover, if the final probation report is not made as directed, probation shall be automatically  
5 extended until such time as the final report is made and accepted by the board.

6 **3. Interview with the Board**

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

12 **4. Cooperate with Board Staff**

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

16 **5. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, Respondent owner, jointly  
18 and severally with Jadine Celina Mah, shall pay to the board its costs of investigation and  
19 prosecution in the amount of \$ \$7,755.25. Respondent owner may pay the Board's costs through  
20 a payment plan approved by the Board.

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

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

26 **6. Probation Monitoring Costs**

27 Respondent owner shall pay any costs associated with probation monitoring as determined  
28 by the board each and every year of probation. Such costs shall be payable to the board on a

1 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as  
2 directed shall be considered a violation of probation.

3 **7. Status of License**

4 Respondent owner shall, at all times while on probation, maintain current licensure with the  
5 board. If respondent owner submits an application to the board, and the application is approved,  
6 for a change of location, change of permit or change of ownership, the board shall retain  
7 continuing jurisdiction over the license, and the respondent shall remain on probation as  
8 determined by the board. Failure to maintain current licensure shall be considered a violation of  
9 probation.

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

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

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

20 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and  
21 renewal license to the board within ten (10) days of notification by the board that the surrender is  
22 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
23 according to board guidelines and shall notify the board of the records inventory transfer.

24 Respondent owner shall also, by the effective date of this decision, arrange for the  
25 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
26 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
27 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
28 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five

1 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
2 of the written notice to the board. For the purposes of this provision, "ongoing patients" means  
3 those patients for whom the pharmacy has on file a prescription with one or more refills  
4 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
5 days.

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

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

#### 11 9. Notice to Employees

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

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

#### 25 10. Owners and Officers: Knowledge of the Law

26 Respondent shall provide, within thirty (30) days after the effective date of this decision,  
27 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
28 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty

1 of perjury that said individuals have read and are familiar with state and federal laws and  
2 regulations governing the practice of pharmacy. The failure to timely provide said statements  
3 under penalty of perjury shall be considered a violation of probation.

4 **11. Posted Notice of Probation**

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

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

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

13 **12. Violation of Probation**

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

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

26 **13. Completion of Probation**

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



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I have read and fully discussed with Respondent I.V. Family Pharmacy, Inc., dba Hope Pharmacy the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: April 23, 2017



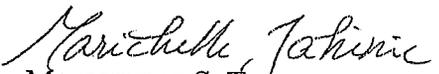
\_\_\_\_\_  
ELIZABETH BRADY  
*Attorney for Respondent*

ENDORSEMENT

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

Dated: *April 24, 2017*

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
ANTOINETTE B. CINCOTTA  
Supervising Deputy Attorney General

  
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**Exhibit A**

**Accusation No. 5530**

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

12 In the Matter of the Accusation Against:

Case No. 5530

13 **I V FAMILY PHARMACY, INC.,**  
**DBA HOPE PHARMACY**  
14 **420 Heffernan Avenue, Suite A**  
**Calexico, CA 92231**

**ACCUSATION**

15 **Pharmacy Permit No. PHY 48589**

16 **JADINE CELINA MAH**  
17 **1101 Emil Hashem Street**  
18 **Calexico, CA 92231**

19 **Pharmacist License No. RPH 45475**

20 **JOSE CAMILO MELENDEZ**  
21 **911 Herrernan Avenue**  
**Calexico, CA 92231**

22 **Pharmacy Technician Registration No. TCH 52678**

23 **ONOFRE MARROQUIN**  
24 **401 E. 8<sup>TH</sup> Street**  
**Holtville, CA 92250**

25 **Pharmacy Technician Registration No. TCH 78446**

26 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about May 1, 2007, the Board issued Pharmacy Permit Number PHY 48589 to  
6 I V Family Pharmacy, Inc., dba Hope Pharmacy (Respondent Hope Pharmacy). The Pharmacy  
7 Permit was in full force and effect at all times relevant to the charges brought herein, and will  
8 expire on May 1, 2017, unless renewed.

9 3. On or about August 12, 1992, the Board issued Pharmacist License Number RPH  
10 45475 to Jadine Celina Mah (Respondent Mah). Respondent Mah was the Pharmacist-in-Charge  
11 of Respondent Hope from May 1, 2007 to April 17, 2014, the Interim Pharmacist-in-Charge of  
12 Respondent Hope from May 20, 2014 to September 25, 2014, and the Pharmacist-in-Charge of  
13 Respondent Hope since September 25, 2014. The Pharmacist License was in full force and effect  
14 at all times relevant to the charges brought herein, and will expire on July 31, 2018, unless  
15 renewed.

16 4. On or about September 17, 2007, the Board issued Pharmacy Technician Registration  
17 Number TCH 78446 to Onofre Marroquin (Respondent Marroquin). The Pharmacy Technician  
18 Registration was in full force and effect at all times relevant to the charges brought herein,  
19 expired on September 30, 2015, and was then cancelled pursuant to Business and Professions  
20 Code section 4402, subdivision (e).

21 5. On or about November 17, 2003, the Board issued Pharmacy Technician Registration  
22 Number TCH 52678 to Jose Camilo Melendez (Respondent Melendez). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein, and expired on March 31, 2013, and was cancelled on July 1, 2013 pursuant to Business  
25 and Professions Code section 4402, subdivision (e).

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## JURISDICTION

6. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

7. Section 4300 of the Code states:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

1 (e) The proceedings under this article shall be conducted in accordance with  
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
3 Government Code, and the board shall have all the powers granted therein. The  
4 action shall be final, except that the propriety of the action is subject to review by  
5 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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10 8. Section 4300.1 of the Code states:

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

### 17 STATUTORY AUTHORITIES

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22 9. Section 4059 of the Code states, in relevant part:

23 (a) A person may not furnish any dangerous drug, except upon the  
24 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
25 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
26 dangerous device, except upon the prescription of a physician, dentist, podiatrist,  
27 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

28 . . . .

10. Section 4060 of the Code states:

11 A person shall not possess any controlled substance, except that furnished to  
12 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
14 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
15 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
16 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
17 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not  
18 apply to the possession of any controlled substance by a manufacturer, wholesaler,  
19 third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist,  
20 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
21 practitioner, or physician assistant, if in stock in containers correctly labeled with  
22 the name and address of the supplier or producer.

23 This section does not authorize a certified nurse-midwife, a nurse practitioner,  
24 a physician assistant, or a naturopathic doctor, to order his or her own stock of  
25 dangerous drugs and devices.

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28 11. Section 4081 of the Code states, in relevant part:

(a) 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,

1 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,  
2 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a  
3 currently valid and unrevoked certificate, license, permit, registration, or  
4 exemption under Division 2 (commencing with Section 1200) of the Health and  
5 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the  
6 Welfare and Institutions Code who maintains a stock of dangerous drugs or  
7 dangerous devices.

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

13 . . . .

14 12. Section 4104 of the Code states, in relevant part:

15 (a) Every pharmacy shall have in place procedures for taking action to  
16 protect the public when a licensed individual employed by or with the pharmacy is  
17 discovered or known to be chemically, mentally, or physically impaired to the  
18 extent it affects his or her ability to practice the profession or occupation  
19 authorized by his or her license, or is discovered or known to have engaged in the  
20 theft, diversion, or self-use of dangerous drugs.

21 (b) Every pharmacy shall have written policies and procedures for  
22 addressing chemical, mental, or physical impairment, as well as theft, diversion, or  
23 self-use of dangerous drugs, among licensed individuals employed by or with the  
24 pharmacy.

25 . . . .

26 13. Section 4105 of the Code states, in relevant part:

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

. . . .

14. Section 4125 of the Code states, in relevant part:

(a) Every pharmacy shall establish a quality assurance program that shall, at  
a minimum, document medication errors attributable, in whole or in part, to the  
pharmacy or its personnel. The purpose of the quality assurance program shall be  
to assess errors that occur in the pharmacy in dispensing or furnishing prescription  
medications so that the pharmacy may take appropriate action to prevent a  
recurrence.

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1 15. Section 4301 of the Code states, in relevant part:

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

6 ...

7 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
8 deceit, or corruption, whether the act is committed in the course of relations as a  
9 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10 ...

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

13 ...

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

...

(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.

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1 16. Section 4307 of the Code states:

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

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

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

18 (b) "Manager, administrator, owner, member, officer, director, associate, or  
19 partner," as used in this section and Section 4308, may refer to a pharmacist or  
20 to any other person who serves in that capacity in or for a licensee.

21 (c) The provisions of subdivision (a) may be alleged in any pleading filed  
22 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3  
23 of the Government Code. However, no order may be issued in that case except  
24 as to a person who is named in the caption, as to whom the pleading alleges the  
25 applicability of this section, and where the person has been given notice of the  
26 proceeding as required by Chapter 5 (commencing with Section 11500) of Part  
27 1 of Division 3 of the Government Code. The authority to proceed as provided  
28 by this subdivision shall be in addition to the board's authority to proceed under  
Section 4339 or any other provision of law.

## REGULATIONS

17. Title 16, California Code of Regulations (CCR), section 1714, states in relevant part:

...

(c)(1) Each quality assurance program shall be managed in accordance with  
written policies and procedures maintained in the pharmacy in an immediately  
retrievable form.

(2) When a pharmacist determines that a medication error has occurred, a  
pharmacist shall as soon as possible:

(A) Communicate to the patient or the patient's agent the fact that a  
medication error has occurred and the steps required to avoid injury or mitigate the  
error.

(B) Communicate to the prescriber the fact that a medication error has  
occurred.

1 (3) The communication requirement in paragraph (2) of this subdivision  
2 shall only apply to medication errors if the drug was administered to or by the  
3 patient, or if the medication error resulted in a clinically significant delay in  
4 therapy.

5 (4) If a pharmacist is notified of a prescription error by the patient, the  
6 patient's agent, or a prescriber, the pharmacist is not required to communicate with  
7 that individual as required in paragraph (2) of this subdivision.

8 . . . .  
9  
10 18. Title 16, CCR, section 1714, states in relevant part:  
11 . . . .

12 (b) Each pharmacy licensed by the board shall maintain its facilities, space,  
13 fixtures, and equipment so that drugs are safely and properly prepared, maintained,  
14 secured and distributed. The pharmacy shall be of sufficient size and unobstructed  
15 area to accommodate the safe practice of pharmacy.  
16 . . . .

17 19. Title 16, CCR, section 1770, states:

18 For the purpose of denial, suspension, or revocation of a personal or facility  
19 license pursuant to Division 1.5 (commencing with Section 475) of the Business  
20 and Professions Code, a crime or act shall be considered substantially related to the  
21 qualifications, functions or duties of a licensee or registrant if to a substantial  
22 degree it evidences present or potential unfitness of a licensee or registrant to  
23 perform the functions authorized by his license or registration in a manner  
24 consistent with the public health, safety, or welfare.

#### 25 COST RECOVERY

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

#### DRUGS

21 21. Norco, hydrocodone 10mg combined with acetaminophen 325mg, is a Schedule III  
22 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a  
23 dangerous drug pursuant to Business and Professions Code section 4022.

24 22. Phenergan with codeine, also known as promethazine with codeine, is a Schedule V  
25 controlled substance pursuant to Health and Safety Code section 11058(c)(1), and a dangerous  
26 drug pursuant to Business and Professions Code section 4022.



1 substance prescriptions were received in Respondent Hope Pharmacy via fax without being  
2 converted into verbal orders.

3 28. During the November 6, 2014 inspection, the Board's inspectors reviewed  
4 Respondent Hope Pharmacy's security and business practice. Technician staff took out the trash.  
5 The office was unorganized, with loose papers and folders all over Respondent Mah's desk.  
6 There were invoices and bottles of CII medications on the counter when the inspectors arrived.  
7 When asked for documentation related to the routine inspection such as invoices and self-  
8 assessment, because of the disorganization, it took Respondent Mah some time to locate the  
9 responsive documents. Respondent Hope Pharmacy was more organized than Respondent Mah's  
10 office. However, there were drugs still located in shipping boxes scattered throughout the office  
11 and pharmacy, as well as a recently received order from their wholesaler left open on the floor of  
12 Respondent Hope Pharmacy.

13 29. During the November 6, 2014 inspection, the Board's inspectors questioned  
14 Respondent Mah about the reported loss. Respondent Mah was not sure exactly how the loss  
15 occurred, but believed some drugs were stolen from will call. She knew there were three former  
16 employees involved in the loss, including two pharmacy technicians, Respondents Melendez and  
17 Marroquin, and an unlicensed pharmacy clerk. Respondent Mah stated the ScriptPro computer  
18 software tracks the location of where a prescription is in the filling process. One Monday,  
19 Respondent Mah looked for a prescription to consolidate with a prescription for the same patient  
20 filled on the previous Friday. According to the computer software, the last person who had  
21 handled the prescription was Respondent Melendez, who was not working that day. Respondent  
22 Mah called and spoke with Respondent Melendez, who told her the prescription should be in will  
23 call, but it was not. Later that same day, Respondent Mah noticed the prescription status in the  
24 computer had been changed again, this time to return to stock (RTS). The initials of the person  
25 completing the change belonged to Respondent Melendez. Since Respondent Melendez was not  
26 working, Respondent Mah had to guess as to who had used Respondent Melendez's login to  
27 change the prescription status. The unlicensed pharmacy clerk admitted to Respondent Mah that  
28 he logged in using Respondent Melendez's login, and changed the status of the prescription to

1 RTS, at Respondent Melendez's request. Respondent Mah also noticed some prescriptions  
2 coming from the ScriptPro Automated Filling Robot had been designated RTS in the computer,  
3 but had not been actually returned to stock. Respondent Marroquin worked with the filling robot.  
4 When confronted, all three employees admitted stealing to Respondent Mah, and signed  
5 admission statements. Respondent Mah did not recall anything about the loss of promethazine  
6 with codeine, other than the unlicensed pharmacy clerk was involved. After Respondent  
7 Melendez was fired, Respondent Mah alerted Farmacia Del Pueblo, where Respondent Melendez  
8 also worked, that he had been fired for theft from Respondent Hope Pharmacy. After she  
9 discovered the theft, Respondent Mah filed police reports. Respondents Melendez and Marroquin  
10 did not seem to be under the influence of controlled substances.

11 30. During the November 6, 2014 inspection, the Board inspectors verified with  
12 Respondent Mah that her original loss reported to the DEA was much smaller than the loss she  
13 identified after completing her audit. The inspectors also discussed technicians being able to  
14 order the medications, and then steal them after they were ordered. According to Respondent  
15 Mah, there was no a particular technician who always ordered or put away the order. During the  
16 discussion, Respondent Mah stated she believed that Respondents Melendez and Marroquin and  
17 the unlicensed pharmacy clerk may have stolen some of the drugs via ordering them, and taking  
18 the drugs when they came in. The inspectors discussed the technicians placing drugs in the trash  
19 and then stealing them after taking out the trash, as well as physical security for the pharmacy.  
20 When asked about what changes had been made to Respondent Hope Pharmacy's operations to  
21 prevent further theft, Respondent Mah included HPAP being locked in the controlled cabinet,  
22 retaining a hard copy of the patient signed prescription delivery slips listing the medications  
23 received from deliveries to patients, and that controlled substances were now double counted.

24 31. On November 6, 2014, the Board inspectors interviewed another pharmacy technician  
25 at Respondent Hope Pharmacy who had known Respondent Melendez for multiple years, and she  
26 stated that she would never have suspected Respondent Melendez to steal medication. This  
27 pharmacy technician further confirmed that Respondent Melendez never seemed to be under the  
28 influence of controlled substances.

1           32. On November 13, 2014, in response to further questions from the Board's inspectors,  
2 Respondent Mah e-mailed to the Board that she became interim Pharmacist-in-Charge of  
3 Respondent Hope Pharmacy because she was submitting an application for a new site location of  
4 a pharmacy, and could not be a Pharmacist-in-Charge of both locations as the other pharmacy is  
5 located beyond the allowable distance (50 miles). She named herself as the Pharmacist-in-Charge  
6 of the new pharmacy since she did not have one for the new site at the time of submitting the  
7 application. In the meantime, she was hoping to find a replacement Pharmacist-in-Charge for  
8 Respondent Hope Pharmacy, but failed to do so before the 120 day limit.

9           33. On November 13, 2014, Respondent Mah responded to questions from the Board's  
10 inspectors about the three terminated employees.

11           a. Respondent Mah reported that Respondent Melendez was no longer a pharmacy  
12 technician because she discovered when she did the pharmacy self-assessment that his license had  
13 lapsed. His main job function was inputting prescriptions. Respondent Melendez was not  
14 allowed to fill, or do anything that only a licensed technician could do. Respondent Melendez did  
15 have access to ordering or keying an item to any orders that were open, especially since there was  
16 a computer that was often used next to him. Many employees are cross-trained, and worked as a  
17 team on a lot of tasks. 90% of Respondent Melendez's time was inputting prescriptions and  
18 answering the phones. Respondent Melendez did help put away the orders on occasions.  
19 Respondent Melendez was terminated on January 20, 2014.

20           b. Respondent Mah reported that Marroquin's main job duties were filling, putting away  
21 the order, answering the phones, and filling the robot. Respondent Marroquin could order if need  
22 be. Respondent Marroquin was terminated on February 12, 2014.

23           c. Respondent Mah reported that the unlicensed technician's main job duties were  
24 customer service in the front, i.e. checking out customers, sorting prescriptions into alphabetical  
25 order in will call, answering phones, closing out the register at the end of the day, and on rare  
26 occasions, delivering prescriptions when needed. The unlicensed technician was terminated on  
27 February 12, 2014.

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1 prescription which they stole from Respondent Hope Pharmacy, in violation of Health and Safety  
2 Code section 11350, subdivision (a), as set forth in paragraphs 24 through 35, which are  
3 incorporated here by this reference.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: Controlled Substances, Dangerous Drug Violations**  
6 **– Respondents Melendez and Marroquin)**

7 41. Respondents Melendez and Marroquin are subject to disciplinary action under section  
8 4301, subdivision (j), of the Code, in that Respondents Melendez and Marroquin stole controlled  
9 substances/dangerous drugs from Respondent Hope Pharmacy, in violation of Health and Safety  
10 Code section 11350, subdivision (a), as set forth in paragraphs 24 through 35, which are  
11 incorporated here by this reference.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(May 24, 2016 Conviction of Embezzlement and Furnishing a Dangerous Drug Without a**  
14 **Prescription – Respondent Melendez)**

15 42. Respondent Melendez is subject to disciplinary action under section 4301,  
16 subdivision (l), of the Code for conviction of a crime substantially related to the qualifications,  
17 functions and duties of a pharmacy technician in that on May 24, 2016, in *People v. State of*  
18 *California v. Jose Melendez*, Imperial County Superior Court, Brawley Jail Department, Case No.  
19 JCF35644, Respondent was convicted on his guilty plea of violation of Penal Code section 504,  
20 embezzlement, and Code section 4059(a), furnishing a dangerous drug without a prescription, as  
21 set forth in paragraphs 24 through 35, which are incorporated here by this reference.

22 43. As a result of his conviction, Respondent Melendez was placed on formal probation  
23 for three years, sentenced to County Jail for 4 days, required to participate in  
24 counseling/educational program, abstain from the possession or use of any drugs, narcotics, or  
25 other illicit substances, submit to alcohol/drug testing, to have no contact with Respondent Mah  
26 and was prohibited from entering the premises or grounds of Hope Pharmacy, among other terms  
27 and conditions.

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**OTHER MATTERS**

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44. Pursuant to Section 4307, if Pharmacy Permit Number PHY 48589 issued to I V Family Pharmacy, Inc., dba Hope Pharmacy is suspended, revoked or placed on probation, and Respondent Mah, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 48589 was revoked, suspended, or placed on probation, Respondent Mah shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

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45. Pursuant to Section 4307, if Pharmacist License Number RPH 45475 issued to Jadine Celina Mah is suspended or revoked, Respondent Mah shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

**DISCIPLINE CONSIDERATIONS**

46. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges that on or about May 17, 2012, in a prior action, the Board of Pharmacy issued Citation Number CI 2011 50067 to Respondent Hope Pharmacy for violation of Code section 4104, subdivisions (a) and (b), for failing to have policies and procedures in place on October 17, 2011, for taking action when licensed individual is impaired or known to have diverted or used drugs; and, for violation of Code section 4125, subdivision (a) and title 16, CCR, section 1711, subdivision (c), for failing to have written policies and procedures for a quality assurance as it pertains to medication errors during an inspection on October 17, 2011. The Citation ordered Respondent Hope Pharmacy to pay \$1,500.00 in civil penalties. That Citation is now final, and is incorporated by reference as if fully set forth.

47. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges that on or about May 17, 2012, in a prior action, the Board of Pharmacy issued Citation Number CI 2011 52333 to Respondent Mah for violation of Code section 4104, subdivisions (a) and (b), for failing to have policies and procedures in place on October 17, 2011, for taking action when licensed individual is impaired or known to have diverted or used drugs; and, for violation of Code section 4125, subdivision (a), and title 16, CCR, section 1711,

1 subdivision (c), for failing to have written policies and procedures for a quality assurance as it  
2 pertains to medication errors during an inspection on October 17, 2011. The Citation ordered  
3 Respondent Mah to pay \$1,000.00 in civil penalties. That Citation is now final, and is  
4 incorporated by reference as if fully set forth.

5 48. To determine the degree of discipline, if any, to be imposed on Respondents,  
6 Complainant alleges that on or about December 17, 2015, in a prior action, the Board of  
7 Pharmacy issued Citation Number CI 2014 64917 to Respondent Hope Pharmacy for violation of  
8 title 16, CCR, section 1716. The circumstances are that on October 24, 2014, pharmacist V.N.  
9 while working at Hope Pharmacy, deviated from the requirements of a prescription without prior  
10 consent of the prescriber. That Citation is now final, and is incorporated by reference as if fully  
11 set forth.

#### 12 PRAYER

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 48589 issued to Respondent  
16 Hope Pharmacy;

17 2. Revoking or suspending Pharmacist License Number Pharmacist License No. RPH  
18 45475 issued to Respondent Mah;

19 3. Revoking or suspending Pharmacy Technician Registration No. TCH 52678 issued to  
20 Respondent Melendez;

21 4. Revoking or suspending Pharmacy Technician Registration No. TCH 78446 issued to  
22 Respondent Marroquin;

23 5. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the  
24 investigation and enforcement of this case, pursuant to Business and Professions Code section  
25 125.3; and,

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

DATED: 9/16/16

*Virginia Herold*

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

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