

**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),¹ petitioner submitted five letters of recommendation, four of which were verified. A sample of letter comments follow:

¹ 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

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. 8th Street
Holtville, CA 92250
Pharmacy Technician Registration No. TCH 78446**

Respondents.

Case No. 5530

OAH No. 2017020570

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER (JADINE
MAH)**

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

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9435
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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**
420 Heffernan Avenue, Suite A
14 Calexico, CA 92231

15 Pharmacy Permit No. PHY 48589

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

18 Pharmacist License No. RPH 45475

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

21 Pharmacy Technician Registration No. TCH
52678

23 **ONOFRE MARROQUIN**
401 E. 8TH Street
24 Holtville, CA 92250

25 Pharmacy Technician Registration No. TCH
78446

27 Respondents.
28

Case No. 5530

OAH No. 2017020570

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO JADINE
MAH 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 Jadine Celina Mah (Respondent) is represented in this proceeding by
9 attorney Elizabeth Brady, whose address is: 8880 Rio San Diego, Suite 800, San Diego, CA
10 92108-1642.

11 3. On or about August 12, 1992, the Board issued Pharmacist License Number RPH
12 45475 to Jadine Celina Mah. The Pharmacist License was in full force and effect at all times
13 relevant to the charges brought herein, and will expire on July 31, 2018, unless renewed.

14 JURISDICTION

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

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

21 ADVISEMENT AND WAIVERS

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

26 7. Respondent is fully aware of her legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
28 the witnesses against her; the right to present evidence and to testify on her own behalf; the right

1 to the issuance of subpoenas to compel the attendance of witnesses and the production of
2 documents; the right to reconsideration and court review of an adverse decision; and all other
3 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

6 CULPABILITY

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

9 10. Respondent agrees that her Pharmacist License is subject to discipline and agrees to
10 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11 CONTINGENCY

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

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

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

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 Pharmacist License Number RPH 45475 to Jadine Celina
8 Mah is revoked. However, the revocation is stayed and Respondent is placed on probation for
9 five (5) years on the following terms and conditions.

10 1. **Obey All Laws**

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

12 Respondent shall report any of the following occurrences to the board, in writing, within
13 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 pharmacist license or which is related to the practice of
22 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
23 for any drug, device or controlled substance.

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

25 2. **Report to the Board**

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

1 been compliance with all the terms and conditions of probation. Failure to submit timely reports
2 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
3 in submission of reports as directed may be added to the total period of probation. Moreover, if
4 the final probation report is not made as directed, probation shall be automatically extended until
5 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 shall appear in person for interviews
8 with the board or its designee, at such intervals and locations as are determined by the board or its
9 designee. Failure to appear for any scheduled interview without prior notification to board staff,
10 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
11 the period of probation, shall be considered a violation of probation.

12 **4. Cooperate with Board Staff**

13 Respondent 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. Continuing Education**

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

19 **6. Notice to Employers**

20 During the period of probation, respondent shall notify all present and prospective
21 employers of the decision in case number 5530 and the terms, conditions and restrictions imposed
22 on respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
24 respondent undertaking any new employment, respondent shall cause their direct supervisor,
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
26 tenure of employment) and owner to report to the board in writing acknowledging that the listed
27 individual(s) has/have read the decision in case number 5530, and terms and conditions imposed
28

1 thereby. It shall be respondent's responsibility to ensure that their employer(s) and/or
2 supervisor(s) submit timely acknowledgment(s) to the board.

3 If respondent works for or is employed by or through a pharmacy employment service,
4 respondent must notify their direct supervisor, pharmacist-in-charge, and owner at every entity
5 licensed by the board of the terms and conditions of the decision in case number 5530 in advance
6 of the respondent commencing work at each licensed entity. A record of this notification must be
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of respondent undertaking any new employment by or through a pharmacy employment
10 service, respondent shall cause their direct supervisor with the pharmacy employment service to
11 report to the board in writing acknowledging that they has read the decision in case number 5530
12 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
13 that their employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

23 During the period of probation, respondent shall not supervise any intern pharmacist, be the
24 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board,
25 except Hope Pharmacy, nor serve as a consultant unless otherwise specified in this order.
26 Respondent may be the pharmacist-in-charge of Hope Pharmacy only. Assumption of any such
27 unauthorized supervision responsibilities shall be considered a violation of probation.

28 ///

1 **8. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent, jointly and
3 severally with I V Family Pharmacy, Inc., dba Hope Pharmacy, shall pay to the board its costs of
4 investigation and prosecution in the amount of \$ \$7,755.25. Respondent may pay the Board's
5 costs through a payment plan approved by the Board.

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

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

11 **9. Probation Monitoring Costs**

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

16 **10. Status of License**

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

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

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

25 Following the effective date of this decision, should respondent cease practice due to
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
27 respondent may tender their license to the board for surrender. The board or its designee shall
28 have the discretion whether to grant the request for surrender or take any other action it deems

1 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
2 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
3 record of discipline and shall become a part of the respondent's license history with the board.

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

10 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
11 **Employment**

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

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

19 **13. Tolling of Probation**

20 Except during periods of suspension, respondent shall, at all times while on probation, be
21 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
22 month during which this minimum is not met shall toll the period of probation, i.e., the period of
23 probation shall be extended by one month for each month during which this minimum is not met.
24 During any such period of tolling of probation, respondent must nonetheless comply with all
25 terms and conditions of probation.

26 Should respondent, regardless of residency, for any reason (including vacation) cease
27 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
28 respondent must notify the board in writing within ten (10) days of the cessation of practice, and

1 must further notify the board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

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

6 "Cessation of practice" means any calendar month during which respondent is
7 not practicing as a pharmacist for at least 40 hours, as defined by Business and
8 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
9 month during which respondent is practicing as a pharmacist for at least 40 hours as a
10 pharmacist as defined by Business and Professions Code section 4000 et seq.

11 14. **Violation of Probation**

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

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

24 15. **Completion of Probation**

25 Upon written notice by the board or its designee indicating successful completion of
26 probation, respondent's license will be fully restored.

27 16. **Remedial Education**

28 Within sixty (60) days of the effective date of this decision, respondent shall submit to the

1 board or its designee, for prior approval, an appropriate program of remedial education related to
2 the grounds for discipline. The program of remedial education shall consist of at least 20 hours,
3 all of which shall be in-person training, which shall be completed as follows and at respondent's
4 own expense: 10 hours per year during each of the first two years of probation. All remedial
5 education shall be in addition to, and shall not be credited toward, continuing education (CE)
6 courses used for license renewal purposes.

7 Failure to timely submit or complete the approved remedial education shall be considered a
8 violation of probation. The period of probation will be automatically extended until such
9 remedial education is successfully completed and written proof, in a form acceptable to the board,
10 is provided to the board or its designee.

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

16 17. No New Ownership of Licensed Premises

17 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
18 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
19 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
20 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
21 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
22 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
23 that interest, but only to the extent of that position or interest as of the effective date of this
24 decision. Violation of this restriction shall be considered a violation of probation.

25 18. Ethics Course

26 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
27 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.

28 ///

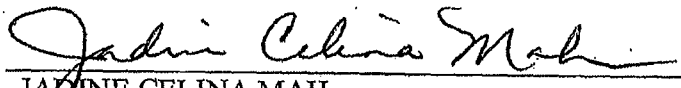
1 Failure to initiate the course during the first year of probation, and complete it within the second
2 year of probation, is a violation of probation.

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

5 ACCEPTANCE

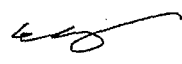
6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Elizabeth Brady. I understand the stipulation and the effect it will
8 have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order
9 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
10 Board of Pharmacy.

11
12 DATED: 4/21/2017


13 JADINE CELINA MAH
14 Respondent

15 I have read and fully discussed with Jadine Celina Mah the terms and conditions and other
16 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
17 and content.

18 DATED: April 23, 2017


19 ELIZABETH BRADY
20 Attorney for Respondent

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Marichelle Tahmic
MARICHELLE S. TAHMIC
Deputy Attorney General
Attorneys for Complainant

SD2015801601/12660830.docx

Exhibit A

Accusation No. 5530

1 KAMALA D. HARRIS
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 783-9435
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 8TH Street**
Holtville, CA 92250

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

26 Respondents.

27 ///

28 ///

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).

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

6
7
8
9
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

18
19
20
21
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
29
30
31
32 10. Section 4060 of the Code states:

33 A person shall not possess any controlled substance, except that furnished to
34 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
35 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
36 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
37 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
38 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
39 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not
40 apply to the possession of any controlled substance by a manufacturer, wholesaler,
41 third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist,
42 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
43 practitioner, or physician assistant, if in stock in containers correctly labeled with
44 the name and address of the supplier or producer.

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

48
49
50
51
52 11. Section 4081 of the Code states, in relevant part:

53 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
54 disposition of dangerous drugs or dangerous devices shall be at all times during
55 business hours open to inspection by authorized officers of the law, and shall be
56 preserved for at least three years from the date of making. A current inventory shall
57 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.

.....

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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:

...

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

....

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

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the 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.

....

///
///
///

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
11
12 18. Title 16, CCR, section 1714, states in relevant part:

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

18
19
20
21
22 19. Title 16, CCR, section 1770, states:

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

29 COST RECOVERY

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

34 DRUGS

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

38 22. Phenergan with codeine, also known as promethazine with codeine, is a Schedule V
controlled substance pursuant to Health and Safety Code section 11058(c)(1), and a dangerous
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.

28

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.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12

OTHER MATTERS

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

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

23
24
25
26
27
28

DISCIPLINE CONSIDERATIONS

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

39 47. To determine the degree of discipline, if any, to be imposed on Respondents,
40 Complainant alleges that on or about May 17, 2012, in a prior action, the Board of Pharmacy
41 issued Citation Number CI 2011 52333 to Respondent Mah for violation of Code section 4104,
42 subdivisions (a) and (b), for failing to have policies and procedures in place on October 17, 2011,
43 for taking action when licensed individual is impaired or known to have diverted or used drugs;
44 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,

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

SD2015801601
81216649 doc.docx