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

Pharmacist License No. RPH 45475

**JOSE CAMILO MELENDEZ
911 Heffernan 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

**DEFAULT DECISION AND ORDER AS
TO JOSE CAMILO MELENDEZ ONLY**

[Gov. Code, §11520]

FINDINGS OF FACT

1
2 1. On or about September 16, 2016, Complainant Virginia K. Herold, in her official
3 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
4 Affairs, filed Accusation No. 5530 against Jose Camilo Melendez (Respondent) before the Board.
5 (Accusation attached as Exhibit A.)

6 2. On or about November 17, 2003, the Board issued Pharmacy Technician Registration
7 No. TCH 52678 to Respondent. The Pharmacy Technician Registration was in full force and
8 effect at all times relevant to the charges brought in Accusation No. 5530. Pharmacy Technician
9 Registration No. TCH 52678 expired on March 31, 2013, and has not been renewed. Pursuant to
10 Business and Professions Code (Code) sections 118(b) and 4300.1, the expiration or cancellation
11 of a board-issued license by operation of law, or by order or decision of the board, or a court of
12 law, shall not deprive the board of jurisdiction to commence or proceed with any investigation of,
13 or action or disciplinary proceeding against, the licensee or to render a decision suspending or
14 revoking the license.

15 3. On or about September 30, 2016, Respondent was served by Certified and First Class
16 Mail copies of the Accusation No. 5530, Statement to Respondent, Notice of Defense, Request
17 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
18 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
19 section 4100, is required to be reported and maintained with the Board. Respondent's address of
20 record was and is: 911 Heffernan Ave., Calexico, CA 92231.

21 4. Service of the Accusation was effective as a matter of law under the provisions of
22 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
23 124.

24 5. On or about October 18, 2016, the aforementioned documents were returned by the
25 U.S. Postal Service marked "Return to Sender; Unable to Forwarding."

26 6. Government Code section 11506(c) states, in pertinent part:

27 (c) The respondent shall be entitled to a hearing on the merits if the respondent
28 files a notice of defense . . . and the notice shall be deemed a specific denial of all

1 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
2 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
3 discretion may nevertheless grant a hearing.

4 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
5 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
6 5530.

7 8. California Government Code section 11520(a) states, in pertinent part:

8 (a) If the respondent either fails to file a notice of defense . . . or to appear at
9 the hearing, the agency may take action based upon the respondent's express
10 admissions or upon other evidence and affidavits may be used as evidence without
11 any notice to respondent

12 9. Pursuant to its authority under Government Code section 11520, the Board finds
13 Respondent is in default. The Board will take action without further hearing and, based on the
14 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
15 taking official notice of all the investigatory reports, exhibits and statements contained therein on
16 file at the Board's offices regarding the allegations contained in Accusation No. 5530, finds that
17 the charges and allegations in Accusation No. 5530, are separately and severally, found to be true
18 and correct by clear and convincing evidence.

19 10. Taking official notice of its own internal records, pursuant to Business and
20 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
21 and Enforcement is \$2,000.00 as of November 10, 2016.

22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Jose Camilo Melendez has
24 subjected his Pharmacy Technician Registration No. TCH 52678 to discipline.

25 2. The agency has jurisdiction to adjudicate this case by default.

26 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
27 Registration based upon the following violations alleged in the Accusation which are supported
28 by the evidence contained in the Default Decision Evidence Packet in this case:

a. Code sections 4059(a) and 4060 for unlawful furnishing of controlled substances;

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- b. Code section 4301(o) in conjunction with Health and Safety (H&S) Code section 11350(a) for unlawful possession of controlled substances;
- c. Code section 4301(j) and H&S Code section 11350(a) for stealing controlled substances/dangerous drugs; and,
- d. Code section 4301(l) for conviction of embezzlement and furnishing drugs without a prescription.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 52678, heretofore issued to Respondent Jose Camilo Melendez is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on January 16, 2017.
It is so ORDERED on December 16, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Amy Gutierrez, Pharm.D.
Board President

81507842.doc
DOJ Matter ID:SD2015801601

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(I.V. FAMILY PHARMACY, INC., DBA HOPE PHARMACY)

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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **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**
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 52678**

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

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

25 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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1 JURISDICTION

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

5 7. Section 4300 of the Code states:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

15 (c) The board may refuse a license to any applicant guilty of unprofessional
16 conduct. The board may, in its sole discretion, issue a probationary license to any
17 applicant for a license who is guilty of unprofessional conduct and who has met all
18 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:

19 (1) Medical or psychiatric evaluation.

20 (2) Continuing medical or psychiatric treatment.

21 (3) Restriction of type or circumstances of practice.

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

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

24 (6) Random fluid testing for alcohol or drugs.

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

26 (d) The board may initiate disciplinary proceedings to revoke or suspend any
27 probationary certificate of licensure for any violation of the terms and conditions
of probation. Upon satisfactory completion of probation, the board shall convert
28 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

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

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

24
25 10. Section 4060 of the Code states:

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

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

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.

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

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

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

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

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

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

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

39 (a) Every pharmacy shall establish a quality assurance program that shall, at
40 a minimum, document medication errors attributable, in whole or in part, to the
41 pharmacy or its personnel. The purpose of the quality assurance program shall be
42 to assess errors that occur in the pharmacy in dispensing or furnishing prescription
43 medications so that the pharmacy may take appropriate action to prevent a
44 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 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
7 deceit, or corruption, whether the act is committed in the course of relations as a
8 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

21 ...
22 (c)(1) Each quality assurance program shall be managed in accordance with
23 written policies and procedures maintained in the pharmacy in an immediately
retrievable form.

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

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

28 (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.

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10 18. Title 16, CCR, section 1714, states in relevant part:
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13 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
14 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
15 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
16 area to accommodate the safe practice of pharmacy.

17 19. Title 16, CCR, section 1770, states:
18

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

26 COST RECOVERY

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

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 23. Vicodin, hydrocodone 5mg combined with acetaminophen 500mg, is a Schedule III
2 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a
3 dangerous drug pursuant to Business and Professions Code section 4022.

4 **FACTS**

5 24. On February 24, 2014, Respondent Mah e-mailed the Board a Drug Enforcement
6 Agency (DEA) Notification stating that Respondent Hope Pharmacy had lost 1,790 tablets of
7 hydrocodone/acetaminophen 5/500mg (HPAP 5/500) and 1,500 ml's of promethazine with
8 codeine (promethazine) via employee pilferage.

9 25. On July 2, 2014, in response to the Board's request, Respondent Mah provided
10 documents to the Board including: Respondent Hope Pharmacy's audit summary statement;
11 Respondent Hope Pharmacy's audit; a Statement form from Respondent Mah declaring under
12 penalty of perjury that the audit and statement were true; notification of the termination of two
13 pharmacy technicians; Respondents Melendez and Marroquin, and an unlicensed pharmacy clerk;
14 a description into the investigation of these three former employees; signed admissions from the
15 three employees; police reports filed with the Calexico Police Department; and DEA inventories
16 and acquisition and disposition records backing up the audit.

17 26. According to the audit, Respondent Hope Pharmacy was short 16,919 tablets of
18 HPAP 5/500, 19,043 ml's of promethazine with codeine, and 16,814 tablets of
19 hydrocodone/acetaminophen 10/325 mg (HPAP 10/325). Respondent Mah's audit summary
20 statement concluded that she had determined there was HPAP 10/325 missing after the DEA
21 visited to investigate the loss.

22 27. On November 6, 2014, the Board's inspectors conducted an inspection of Respondent
23 Hope Pharmacy. Respondent Mah was present and assisted with the inspection. Respondent
24 Mah informed the inspectors that a floater pharmacist came in a few days a week to assist her.
25 The pharmacy was using ScriptPro prescription software. During the inspection, Respondent
26 Mah was unable to locate a theft and impaired employee policy, a technician job description; a
27 temporary absence of a pharmacist policy, or an interpretive service policy. Electronic controlled
28

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 34. On November 26, 2014, the Board's inspectors received additional documents from
2 Respondent Mah including: policy and procedures for interpretive services, language line
3 instructions, impaired employee policy, and a temporary absence of pharmacist policy; acquisition
4 records from wholesalers; and disposition records. Respondent Mah indicated that she had found
5 the policies and procedures for theft and impairment shortly after the inspection.

6 35. The Board's inspectors sent letters to Respondents Melendez and Marroquin. Only
7 Respondent Marroquin responded. Respondent Marroquin reported that he worked at Respondent
8 Hope Pharmacy from March 2009 to February 2014. Respondent Marroquin reported that he took
9 Vicodin from Respondent Hope Pharmacy for self-use, and did so from 2013 to 2014.
10 Respondent Marroquin reported that he was aware that Respondent Melendez was also taking
11 drugs from Respondent Hope Pharmacy, but he did not know if he sold them or took them
12 himself. Respondent Marroquin reported that he took the drugs because they "[m]ade me feel
13 good, accessible [sic], easy to get." Respondent Marroquin reported taking about 300 pills within
14 a year. Respondent Marroquin explained how he took the drugs from Respondent Hope
15 Pharmacy: "When patients didn't want their Vicodin I would (sometimes) take them. 30 at a time
16 [sic], because they fit in my pocket and were easy to take out." Respondent Marroquin reported
17 that he was not arrested or prosecuted. Respondent Marroquin reported that he was sorry about
18 what happened, ashamed of himself, and was no longer seeking employment in a pharmacy.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Safety and Properly Prepare, Maintain, Secure and Distribute Drugs –**
21 **Respondents Hope Pharmacy and Mah)**

22 36. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section
23 4301, subdivision (j), of the Code, in that Respondents could not account for the loss of 16,919
24 tablets of hydrocodone/acetaminophen 5/500 mg, 19,043 ml's of promethazine with codeine, and
25 16,814 tablets of hydrocodone/acetaminophen 10/325 mg between October 26, 2011 and May 7,
26 2014 in violation of California Code of Regulations, title 16, section 1714, subdivision (b), as set
27 forth in paragraphs 24 through 35, which are incorporated here by this reference.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Acquisition, Disposition, and Current Drug Inventory – Respondents Hope Pharmacy and Mah)

37. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section 4301, subdivision (j), of the Code, in that Respondents could not 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 in violation of sections 4081, subdivision (a), and 4105, subdivision (a) of the Code, as set forth in paragraphs 24 through 35, which are incorporated here by this reference.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Theft and Impairment Policies and Procedures – Respondents Hope Pharmacy and Mah)

38. Respondents Hope Pharmacy and Mah are subject to disciplinary action under section 4301, subdivision (o), of the Code, in that during an inspection on October 17, 2011, theft and impairment policies were not available and a correction was issued, and during an inspection on November 6, 2014, theft and impairment policies were again not located in violation of section 4104, subdivisions (a) and (b), of the Code, as set forth in paragraphs 24 through 35, which are incorporated here by this reference.

FOURTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances – Respondents Melendez and Marroquin)

39. Respondents Melendez and Marroquin are subject to disciplinary action under section 4059, subdivision (a), and 4060 of the Code, in that Respondents obtained controlled substances/dangerous drugs from Respondent Hope Pharmacy, without a prescription, as set forth in paragraphs 24 through 35, which are incorporated here by this reference.

FIFTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substances – Respondents Melendez and Marroquin)

40. Respondents Melendez and Marroquin are subject to disciplinary action under section 4301, subdivision (o), of the Code, in that Respondents possessed controlled substances without a

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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1 **OTHER MATTERS**

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

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

12 **DISCIPLINE CONSIDERATIONS**

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

23 47. To determine the degree of discipline, if any, to be imposed on Respondents,
24 Complainant alleges that on or about May 17, 2012, in a prior action, the Board of Pharmacy
25 issued Citation Number CI 2011 52333 to Respondent Mah for violation of Code section 4104,
26 subdivisions (a) and (b), for failing to have policies and procedures in place on October 17, 2011,
27 for taking action when licensed individual is impaired or known to have diverted or used drugs;
28 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 ///

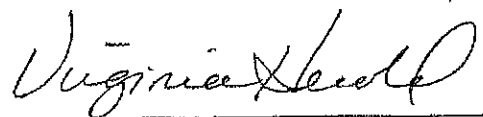
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6. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/16



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

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