

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

In the Matter of the Accusation Against:

PACIFIC PLAZA PHARMACY INC.,
NADIA A. ANDRAWES, PIC, NAGI M.
YOUSSEF, PRESIDENT, OWNER, SOLE
SHAREHOLDER,
Pharmacy Permit License No. PHY 44905,

NADIA A. ANDRAWES
Registered Pharmacist No. RPH 42542,

NAGI M. YOUSSEF
Pharmacy Technician No. TCH 30442,

Respondents.

Case No. 5688

OAH No. 2016120423

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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 August 22, 2018.

It is so ORDERED on July 23, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Victor Law, R.Ph.
Board President

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PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 6, 7, and 8, 2017, in Los Angeles, California.

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

Armond Marcarian, Esq., represented respondents Pacific Plaza Pharmacy Inc. (respondent Pharmacy), Nagi Youssef (respondent Youssef), and Nadia A. Andrawes (respondent Andrawes) (collectively, respondents).

After the hearing, the record was held open until April 6, 2018, for the submission of closing and reply briefs.¹ The parties timely filed their briefs. Complainant's closing brief

¹ The record was initially held open until February 15, 2018, to allow the parties to submit closing briefs after completion of the written hearing transcripts. Because of transcription delays, the ALJ extended the time for briefing until March 28, 2018. The time to file closing briefs was extended a third time until April 6, 2018, at respondents' request.

and reply brief were marked and lodged as Exhibits 71 and 72, respectively; respondents' closing brief and reply brief were marked and lodged as Exhibits D and E, respectively. The matter was deemed submitted on April 6, 2018.

In addition, pursuant to the Post-Hearing Order re: Closing Briefs and Evidentiary Matters, dated November 9, 2017, complainant requested that the ALJ take official notice of the following decisions: *Sternberg v. California State Bd. Of Pharmacy* (2015) 239 Cal.App.4th 1159; *In the Matter of the Accusation Against Trinity Mission Pharmacy and Joel Bernard Soburn*, Board Case No. 5558; *In the Matter of the Accusation Against PCC Ventures LLC, dba Pharmacy Care Concepts and Stephen L. Stange, PIC*, Board Case No. 5294, and *In the Matter of the Accusation Against Kaiser Permanente Corp., dba Kaiser Permanente Pharmacy #833, and Darin L. Sise, RPH*, Board Case No. 5533. Official notice is taken of the decisions pursuant to Government Code section 11515 and Evidence Code section 451, subdivision (a), and the Board decisions are marked and lodged as Exhibits 68, 69, and 70.²

Complainant also requested that official notice be taken of the fact that “there is an opioid epidemic or crisis in the United States, with a rapid increase of addiction and death by opioid overdose throughout the country.” (Letter to ALJ, dated November 21, 2017.) Official notice may be taken of any facts and propositions that are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code § 452, subd. (h); see also Govt. Code § 11515 [official notice may be taken of any fact which may be judicially noticed by California courts].) Although the current existence of an opioid epidemic in this country is not reasonably subject to dispute, the fact is not relevant to the issues in this proceeding, i.e., whether respondents' actions between 2013 and 2015 violated certain statutes subjecting respondents to discipline and, if so, the appropriate nature of the discipline imposed. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [“any matter to be judicially noticed must be relevant to a material issue”].) Accordingly, complainant's request is declined.³

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² The Post-Hearing Conference Order granted respondents' request that the ALJ take official notice of the following Board decisions: *Vons Corporation, dba Vons Pharmacy 2406*, Board Case No. 5554 and *Care Pharmacy dba CVS Pharmacy 9145*. They were marked as Exhibits B and C.

³ Upon review of the exhibits, the ALJ redacted personal telephone numbers from pages AGO-75 and AGO-076 of Exhibit 17 to protect from disclosure to the public.

FACTUAL FINDINGS

Jurisdiction

1. On August 15, 2000, the Board issued Pharmacy Permit License Number PHY 44905 to respondent Pharmacy. Respondent Youssef is respondent Pharmacy's president, owner, and sole shareholder. The Pharmacy Permit License is effective until August 1, 2018.
2. On April 14, 1980, the Board issued Registered Pharmacist License Number RPH 42542 to respondent Andrawes. Respondent Andrawes' license is scheduled to expire on August 31, 2018.
3. On August 24, 1999, the Board issued Pharmacy Technician License Number TCH 30442 to respondent Youssef. The Board revoked respondent Youssef's pharmacy technician license on November 23, 2017, in a decision issued in the proceeding entitled *In the Matter of the Accusation Against: Whittier Plaza Pharmacy Inc., dba The Prescription Shop – Whittier et al.*, case number 5687 (OAH number 201600358).
4. On August 14, 2016, in her official capacity, complainant filed the Accusation seeking to discipline respondents based on the results of a Board investigation launched after discovery of a widespread loss of controlled substances from respondent Pharmacy's inventory between March 2013 and February 2015.
5. On September 2, 2016, each of the respondents timely filed a Notice of Defense and Answer. This hearing ensued.

Factual Background

6. Respondent Pharmacy is a small retail pharmacy located in a medical office building in Long Beach, California. Respondent Youssef acquired respondent Pharmacy in 2000. Respondent Andrawes has been the pharmacist in charge (PIC)⁴ of respondent Pharmacy since September 18, 2006. Respondent Pharmacy is open five days a week. From 2013 through February 2015, the time during which the violations alleged in the Accusation occurred, respondent Pharmacy filled approximately 100 to 120 prescriptions per day.
7. During the relevant period, respondent Pharmacy was staffed by respondent Andrawes along with a pharmacy intern, a pharmacy technician, and a clerk / delivery person. Respondent Andrawes was present at respondent Pharmacy during all business hours. She never left respondent Pharmacy to run errands or to eat lunch. Respondent Youssef's role at respondent Pharmacy was limited to paying bills and handling other

⁴ “‘Pharmacist-in-charge’ means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.” (Bus. & Prof. Code, § 4036.5.)

financial and business matters. He visited respondent Pharmacy approximately once a week; he delegated management of respondent Pharmacy to respondent Andrawes.

8. On February 12, 2015, the Los Angeles Sheriff's Department (LASD) arrested Peter Pachejo (Peter), a clerk and delivery person employed by respondent Pharmacy, on an outstanding warrant for an unpaid traffic ticket. In their search of Peter's car, the arresting officers found an unsecured gun. When they searched Peter, they found a pill bottle containing 80 tablets of alprazolam (generic form of Xanax) in his pants pocket along with several thousand dollars of cash. Peter informed LASD that he must have inadvertently placed the bottle in his pants pocket while working at respondent Pharmacy.

9. Peter had worked as a delivery person / clerk at respondent Pharmacy for more than 16 years. His tenure predated respondent Youssef's acquisition of respondent Pharmacy and respondent Andrawes' employment at respondent Pharmacy. Peter's responsibilities included delivering medicine to customers, greeting customers, cleaning, stocking shelves, and helping count some of the medication. Although Peter had once been a licensed pharmacy technician, he had allowed his license to lapse in 2009. Respondents considered Peter to be "absent-minded" and not particularly well-organized; however, respondents did not fire him because they liked and trusted him. Peter also was well-liked and trusted by respondent Pharmacy's customers and patients.

10. On February 17, 2015, the LASD detective assigned to the matter contacted respondent Pharmacy to confirm Peter's employment and the source of the tablets. He spoke with respondent Andrawes, who told the detective that no alprazolam pills were missing from respondent Pharmacy's inventory. In the conversation, she also indicated her disbelief that Peter had stolen any pills. Respondent Andrawes shared with the detective her belief that Peter was honest and trustworthy. However, she promised the detective that she would review past inventory to determine whether any drugs were missing.

11. Immediately after speaking with the LASD detective, respondents conducted a full inventory audit and compared the results with the DEA biennial audit they had conducted in March 2013.⁵ Based on their investigation, respondents realized that a large

⁵ Under regulations promulgated by the United States Drug Enforcement Administration (DEA), "[e]very person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances" and take a new inventory at least biennially thereafter. (21 C.F.R. 1304.11(b), (c).) "Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. . . . The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory." (21 C.F.R. § 1304.11(a).) The Board requires the biennial inventory to be "available for inspection upon request for at least 3 years after the date of the inventory." (Cal. Code Regs., tit. 16, § 1718.)

amount of controlled substances had been stolen or diverted from respondent Pharmacy and concluded that Peter was responsible. Both respondents Youssef and Andrawes were shocked to learn of the extent of the missing drugs and Peter's involvement, as they had never detected that any drugs were missing up until then, never observed Peter steal any drugs, and had experienced no problems with any of Peter's customer deliveries. Peter also had passed a criminal background check. Respondent Youssef immediately terminated Peter's employment at respondent Pharmacy.

12. Respondent Youssef filed a preliminary report about the missing drugs with the Long Beach Police Department on February 26, 2015. (Ex. 5, p. 13.) Soon thereafter, both respondents Andrawes and Youssef voluntarily went to the police station and identified Peter in a photographic line-up. (*Id.*, pp. 15-16.)

13. Peter did not testify at hearing, and the evidence did not contain any of the details of the theft or diversion of controlled substances from respondent Pharmacy. Consequently, the timing, frequency, or methodology of the theft, i.e., how Peter gained access to the controlled substances and removed them from the pharmacy premises, was not made known.

14. On February 26, 2015, respondent Youssef and respondent Andrawes notified the DEA of the loss of the controlled substances. On March 3, 2015, respondent Pharmacy filed a DEA Form 106 with the DEA, reporting that respondent Pharmacy had lost 270,595 tablets of various controlled substances and 330,226 ml (698 pint bottles) of promethazine with codeine syrup over a two-year period. Respondents listed the type of theft/loss as "Employee Pilferage." (Ex. 12.) Soon thereafter, respondents filed a report with the Board regarding the theft. (Ex. 30.)

15. Because of the size of the reported loss, on March 6, 2015, three DEA investigators and three Board inspectors conducted a joint inspection of respondent Pharmacy. During the joint inspection, the investigators and inspectors reviewed pharmacy records and interviewed respondents.

16. Respondents reported to the investigators and inspectors that less than five percent of the 100 to 120 prescriptions they filled each day during the audit period were for controlled substances. These numbers were confirmed in the Controlled Substance Utilization and Review Evaluation System (CURES), as reported in the DEA Report, which revealed that respondents filled approximately 1,628 prescriptions for controlled substances in the year before the audit, approximately five to six prescriptions per day. (Ex. 6.)

17. During the inspection of respondent Pharmacy, respondent Youssef surrendered his DEA registration, which had allowed respondent Pharmacy to sell controlled substances. (Ex. 15.) The impetus for respondent Youssef's surrender was his desire to assist the DEA in its work. After receiving the DEA registration, the DEA investigators confiscated all the controlled substances in respondent Pharmacy.

18. In reviewing dispensing records provided by respondents and sales and other records supplied by respondent Pharmacy's distributors, Noelle Randall, the Board inspector assigned to the matter, sought to confirm the losses respondents reported in the DEA Form 106. In her report, which forms the basis of the Accusation, Ms. Randall reached findings similar to those of respondents regarding the amounts of missing controlled substances during the period from March 4, 2013, the date of respondents' last DEA Biennial Audit, to February 18, 2015, the date when Peter was fired from respondent Pharmacy:

Controlled Substance	Losses reported by Pharmacy	Losses determined by Board's audit
Acetaminophen-Codeine #4 Tablets, 300mg – 60mg (brand name, Tylenol with Codeine)	9,053	10,295
Diazepam, 10 mg Tablets (brand name, Valium)	2,232	2,232
Clonazepam, 2 mg Tablets (brand name, Klonopin)	511	511
Hydrocodone-APAP, 5-325 mg Tablets (brand name, Norco)	4,384	3,899
Hydrocodone-APAP, 10-325 mg Tablets (brand name, Norco)	118,248	119,182
Hydrocodone-APAP, 7.5-325 mg Tablets (brand name, Vicodin)	42,453	42,453
Hydrocodone-APAP, 7.5-750 Tablets (brand name, Lortab 75)	16,434	19,234
Promethazine-Codeine Syrup 10 mg-6.25 mg/5 mL	330,226 ml [698 pint bottles]	333,717 ml [705 pint bottles]
Carisoprodol, 350 mg Tablets (brand name, Soma)	41,682	41,655

Alprazolam, 1 mg Tablets (brand name, Xanax)	100	100
Alprazolam, 2 mg Tablets (brand name, Xanax)	35,498	35,450
TOTALS	270,595 tablets and 698 pints of controlled substances	275,011 tablets and 705 pints of controlled substances

(Ex. 8, pp. AGO-011; AGO-020.)

19. The controlled substances identified in Factual Finding 18 are considered dangerous drugs under Business and Professions Code⁶ section 4022 because they can only be dispensed by prescription. Except for hydrocodone-APAP (Norco and Vicodin), the missing drugs were comprised of Schedule III to Schedule V (Schedule III-V) controlled substances.⁷ Hydrocodone-acetaminophen (5mg/325mg, 10mg/325mg) (Norco or Vicodin) was considered a Schedule III controlled substance until October 26, 2014, when it was reclassified as a Schedule II controlled substance.⁸ (21 C.F.R. § 1308.)

20. Respondents calculated the purchase value of the missing drugs to be \$57,000. According to the DEA, the street value of the missing drugs exceeded one million dollars.

Operational Standards and Security

21. Throughout the two-year period when the theft occurred, respondents had several safeguards to ensure against theft or loss of controlled substances and dangerous drugs. Respondent Pharmacy had an alarm, metal bars on its windows, and working security monitoring cameras. Respondent Andrawes never left respondent Pharmacy during working hours, and she conducted a perpetual (running) inventory of Schedule II controlled

⁶ All undesignated statutory references are to the Business and Professions Code.

⁷ Acetaminophen with codeine (Tylenol with codeine) is a Schedule III drug pursuant to Health and Safety Code section 11056, subdivisions (e)(2) and (e)(4). Alprazolam (Xanax), clonazepam (Klonopin), and diazepam (Valium) are Schedule IV controlled substances pursuant to Health and Safety Code 11057, subdivisions (d)(1), (d)(7), (d)(9); carisoprodol (Soma) is a Schedule IV substance as designated by Code of Federal Regulations, title 21, section 1308.14, subdivision (c)(6). Promethazine with codeine is a Schedule V drug pursuant to Health and Safety Code section 11058, subdivision (c)(1).

⁸ Schedule II controlled substances are those that have a high potential for abuse which may lead to severe psychological or physical dependence.

substances.⁹ Respondent Andrawes also conducted a weekly “walk through” of respondent Pharmacy’s shelves to verify its controlled substance inventory, kept the Schedule II controlled substances in a separate locked compartment, and personally signed for all drug deliveries from Cardinal Health, Inc. (Cardinal), respondent Pharmacy’s principal drug distributor. In addition, respondent Andrawes placed the ordered medications for delivery in an individual delivery bag and confirmed that the customers had signed for the delivered medications. Respondents complied with DEA record-keeping regulations and conducted biennial audits in a timely manner. Respondents also regularly screened their employees for criminal activity. Respondent Andrawes frequently turned away patients with prescriptions for controlled substances if she was unfamiliar with the prescribing doctor, the patient lived far from respondent Pharmacy, or the diagnosis did not warrant the prescription. Despite these practices, respondents did not detect any theft, missing inventory, or anything out of the ordinary.

22. Complainant does not dispute the merits of the foregoing precautions; however, complainant contends that respondents’ inventory control was lax prior to discovery of the theft. According to Ms. Randall, respondent Andrawes failed to maintain effective control of the stock of controlled substances because she did not strictly supervise drug ordering and receiving by respondent Pharmacy. If respondents had maintained better inventory control, Ms. Randall asserted that respondents would have become aware that unusually large numbers of controlled substances had been ordered relative to respondent Pharmacy’s needs and that a large portion of those controlled substances had been removed from respondent Pharmacy after their delivery.

23. In the period before the theft, respondents ordered most of the controlled substances they required from Cardinal through Cardinal’s website on a dedicated computer terminal set up in respondent Pharmacy. Each morning, respondent Andrawes would use her password to activate the Cardinal website; the password was not shared with or known to any other respondent Pharmacy employees. Once the Cardinal website was activated, respondent Andrawes as well respondent Pharmacy’s other employees, including Peter, were permitted to order all drugs, including Schedule III-V controlled substances. Only respondent Andrawes was permitted to order Schedule II controlled substances. At the end of the business day, respondent Andrawes sent the entire order to Cardinal and then logged off from the website. Respondent Andrawes did not review the Cardinal orders before they were sent.

24. Respondent Andrawes signed for all deliveries received from Cardinal. The Cardinal delivery included an invoice identifying the drugs ordered and a tote containing the ordered drugs. Respondent Andrawes did not sign the invoice; instead she would briefly

⁹ Once Norco and Vicodin were designated as controlled substances on October 26, 2014, respondent Andrawes included those drugs in her Schedule II perpetual inventory; that inventory did not reveal that any Norco or Vicodin tablets were stolen or diverted after October 26, 2014.

compare the invoice and the order to check for discrepancies. Her primary focus in reviewing the invoice and the order, however, was to ensure that there were no discrepancies in the ordering of Schedule II controlled substances. Any respondent Pharmacy employee was permitted to open the Cardinal tote. Peter and the other respondent Pharmacy employees were responsible for removing the items in the totes, including the Schedule III-V controlled substances, and placing all but the Schedule II controlled substances on the shelves. Respondent Andrawes required that the Schedule II controlled substances in the tote be provided to her. Respondent Andrawes' review of the Cardinal delivery did not include opening the tote to determine the amount of Schedule III-V controlled substances ordered or whether the Schedule III-V controlled substances and other drugs delivered matched with those ordered and those reflected on the invoice.

25. None of respondent Andrawes' ordering practices for Schedule III-V controlled substances were unlawful. However, the combined effect of these practices made it less likely that respondent Andrawes would be able to detect any unusual ordering patterns or significant discrepancies between the amounts of Schedule III-V controlled substances ordered and the amounts prescribed. Given the small number of prescriptions for Schedule III-V controlled substances that she handled each day, a large order for one or more of those substances --which could have been detected by closely reviewing either the order itself or the Cardinal invoice provided at delivery -- presumably would have alerted respondent Andrawes that something was amiss. In addition, by failing to open the Cardinal drug totes herself, respondent Andrawes missed another "visual" signal of the large amounts of controlled substances ordered, which might have prompted her to investigate further.

26. Respondent Andrawes' failings in inventory control were in large part due to her misplaced trust in Peter. Given their constant day to day contact in a small space, respondents Andrawes considered Peter as family. She reported that everybody loved him and thought he was a "lovely guy." She believed him to be disorganized, but she did not recommend firing him because the kind of work he did at respondent Pharmacy did not require good organizational skills. Respondent Andrawes believed Peter when he told her that he had a rough start in life, he suffered from a heart condition, did not take drugs because they made him sick, and he was a successful rap music artist. Respondent Youssef as well as John Kolta, another pharmacist who had earlier worked with Peter and testified at hearing, believed the same. Although Peter told respondents he bought a new house and car during this period, respondents believed he did so with his earnings as a musician. While both were cognizant of Peter's failings, including an arrest for fighting in high school that he had disclosed, they were willing to forgive them because he was so well-liked.

27. Additional practices at respondent Pharmacy contributed to respondent Andrawes' failure to detect the theft of Schedule III-V controlled substances. Respondent Youssef authorized payment to Cardinal without knowledge of the specific drugs that had been ordered or received. The Cardinal bills did not itemize the medications ordered; that information was contained on underlying invoices, which respondent Youssef did not review. As a result, respondent Youssef was unaware of any abnormal ordering patterns, and the additional amount paid (\$57,000) over a span of two years for the stolen drugs did not

signal any unusual purchases. Respondent Youssef admitted that he committed an error in judgment in paying the bills in this manner.

28. Ms. Randall's investigation also found that lapses at both Cardinal and Associated Pharmacies Inc. (API), respondent Pharmacy's secondary drug distributor, contributed to respondents' ignorance of the theft. According to Ms. Randall's report, Cardinal, in violation of law, furnished controlled substances to respondent Pharmacy "despite patterns of irregular ordering including significant increases in orders for commonly diverted controlled substances between 2012 and 2013 and 2013 and 2014." (Ex. 8, p. AGO-036.) Notwithstanding significant spikes in ordering of certain Schedule III-V controlled substances, Cardinal continued to ship these drugs to respondents without notifying them of any irregularities. Ms. Randall also concluded that API violated relevant law by allowing prescription drugs, which at times might have included controlled substances, to be delivered to respondent Pharmacy without requiring a pharmacist's signature.

Delivery of Dangerous Drugs by API

29. API sold both controlled substances and other prescription drugs to respondent Pharmacy. Unlike Cardinal, which had its own delivery system, API delivered its items by Federal Express on an as needed basis; Federal Express deliveries for API to respondent Pharmacy did not occur daily and did not always include controlled substances.

30. Complainant did not provide a copy of the Federal Express label accompanying or affixed to the package delivered for API. It is therefore not known if the Federal Express label identified the package's sender (API) or the contents of the API package.

31. It was respondents' practice to allow any respondent Pharmacy employee to sign for deliveries made by Federal Express because respondent Pharmacy received office and other non-drug supplies as well as API deliveries via Federal Express. The Federal Express driver never required a pharmacist to sign for any of the packages, even if they were sent by API. Respondents were not made aware of API's instructions requiring a pharmacist's signature for delivery.

32. To establish that non-pharmacy employees signed for pharmaceuticals from API, complainant offered 17 Federal Express receipts allegedly reflecting signatures of respondent Pharmacy's non-pharmacy employees (Ex. 48) as well as lists supplied by API identifying the dates when a particular drug was sent to respondent Pharmacy. (Ex. 58). None of the recipients who allegedly signed the Federal Express receipts testified to authenticate their signatures or to establish that the packages they signed for contained the items identified by the API lists. The receipts and the API lists, which were received in evidence as administrative hearsay,¹⁰ are insufficient by themselves to establish that non-

¹⁰ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is

pharmacy employees signed for the API packages, the subject API packages were delivered, or the contents of the API packages.

Improper Prescription Practices

33. In its inspection of documents provided by respondent Pharmacy, the Board inspectors identified five prescriptions for controlled substances filled by respondent Andrawes that had been written on non-conforming prescription forms. (Exs. 20, 21, 22, and 23.) The prescriptions were on plain white paper without the required pre-printed pattern feature, watermark, and other features required to be used for controlled substances. In addition, one of the prescriptions, which respondent Andrawes asserted was faxed, did not have an ink signature. (Ex. 23.)

34. When the mistakes were pointed out, respondent Andrawes acknowledged her errors. The prescriptions were written by prescribers in the same building as respondent Pharmacy. Because the prescriptions were for people she knew and who could easily have faxed the prescriptions, respondent Andrawes considered the prescriptions to be faxed and therefore exempt from the prescription form requirements.

35. The Board inspectors also identified a prescription for a Schedule IV controlled substance that was prescribed to the prescriber, which is contrary to law. (Ex. 24.) Respondent Andrawes admitted she was aware of the prohibition and filled the prescription in error; the doctor who wrote the prescription for himself works in the same building where the pharmacy is located. The doctor's prescription record indicates this was the only prescription for a controlled substance that he had written for himself. (Ex. 25.)

DEA Form 222s

36. As part of their inspection, the DEA investigators and Board inspectors also reviewed respondents' ordering procedures for Schedule II controlled substances. Federal law provides that only certain individuals at a pharmacy registered with the DEA can order Schedule II controlled substances and that those registrants are required to provide a DEA Form 222 to the distributor upon receipt of the drugs. (21 U.S.C. § 828; 21 C.F.R. § 1305.) The DEA registrant can assign the right to order Schedule II controlled substances to another party through a written power of attorney. Accordingly, the investigators sought copies of respondents' DEA Form 222s and any written powers of attorney provided to others.

37. Respondent Youssef, as the DEA registrant for respondent Pharmacy, had the right to sign the DEA Form 222s for respondent Pharmacy. However, until learning of Peter's arrest, respondent Youssef never had executed a written power of attorney also giving respondent Andrawes the right to do so. Instead, respondent Youssef had verbally authorized respondent Andrawes to sign his name on the DEA Form 222 to order Schedule II

objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding.

controlled substances and to provide the DEA Form 222 to the Cardinal driver who delivered the drugs. Because of the small number of prescriptions for Schedule II controlled substances handled by respondent Pharmacy and the requirement that the power of attorney be witnessed by two people, respondent Youssef had forgotten over the years to formalize his verbal authorization with a written power of attorney. When reviewing the inventory and paperwork after Peter's arrest, respondents realized their omission, and thus on March 3, 2015, respondent Youssef executed a written power of attorney granting respondent Andrawes the right to sign a DEA Form 222 for respondent Pharmacy.

38. During the inspection, the six investigators and inspectors questioned respondent Andrawes regarding the execution of DEA Form 222s prior to March 3, 2015. In response, respondent Andrawes stated to the DEA investigators and Board inspectors that respondent Youssef had always signed the DEA Form 222s. However, in their separate interview with respondent Youssef, respondent Youssef stated he had never ordered Schedule II controlled substances for respondent Pharmacy. When confronted with respondent Youssef's statement, respondent Andrawes changed her response and stated that she had signed respondent Youssef's name on DEA Form 222s prior to March 3, 2015, based on respondent Youssef's oral authorization.

39. At hearing, respondent Andrawes credibly described her feelings of fear, intimidation, and confusion during the questioning by the DEA investigators. She felt she was being treated like a criminal, although she had done nothing wrong. Respondent's first language is not English, and it is not clear she fully comprehended the DEA investigators' questions at the time. Even at hearing, her testimony revealed her misunderstanding of the meaning of "signature." She repeatedly stated she did not "sign" respondent Youssef's name, although she admitted that she had written his name on the DEA Form 222s with his permission.

40. Complainant does not contend that respondents improperly used the DEA Form 222s and does not seek discipline on that basis. Nor does complainant contend that any irregularity regarding the signatures on the Form 222s contributed in any way to the subject theft.

Mitigation and Rehabilitation Evidence

41. Respondent Andrawes is 60 years old, married, and has two adult children, one of whom is a pharmacist. Respondent Andrawes has been a licensed pharmacist for over 29 years. She loves being a pharmacist, and she testified that the loss of her license would be devastating, both personally and financially.

42. Respondent Andrawes is active in her church. She assists with Sunday school and regularly advises elderly congregants regarding health and medication issues.

43. None of the respondents have any prior disciplinary history, other than a citation against respondent Andrawes 14 years ago for failure to wear a name badge.¹¹ Neither respondent Andrawes nor respondent Pharmacy has any record of any complaints to the Board filed against them. In addition, respondent Andrawes reported that regular audits of respondents' prescriptions by CVS, Caremark and Blue Shield under Medicare Part D had not found any issues regarding respondents' prescribing practices.

44. Respondents have fully cooperated with the Board, the DEA, and the police regarding the theft. While the LASD expressed some concerns about respondents' initial disbelief of Peter's guilt upon learning of Peter's arrest, once respondents confirmed the theft, they worked diligently to discover what had occurred. They have timely complied with the Board's requests for information and provided all documents sought by the Board.

45. No evidence was submitted demonstrating that any of the respondents diverted any of the missing controlled substances for their own use or profited from the theft. Nor was any evidence submitted that respondents knew of the theft but failed to act. There was also no evidence that any controlled substance designated as Schedule II during the period of the theft was stolen or diverted.

46. Respondents have implemented significant changes in their policies and operations to prevent recurrence of an internal theft. They recognize that their inattention to ordering and delivery was due to the trust they placed in their employees, and the newly instituted measures reflect their awareness of the limitations of that trust. In addition to the measures that had been in place during the 2013 to 2015 period, the new measures include the following: (1) all drug orders are now reviewed by respondent Andrawes before they are sent; (2) only respondent Andrawes can order Schedule III-V controlled substances; (3) only respondent Andrawes or the pharmacy technician can place drugs on the shelves; (4) only respondent Andrawes can sign for Federal Express deliveries; (5) employees are prohibited from bringing bags and other items into the pharmacy area; (6) respondent Andrawes closely reviews each invoice for prescription drugs; and (7) respondent Andrawes expanded her perpetual inventory of Schedule II controlled substances to include Schedule III-V controlled substances. Although those practices limited solely to Schedule III-V controlled substances were suspended after respondents stopped dispensing controlled substances, respondents continue to implement the other stricter ordering and delivery practices. In addition, if respondent Pharmacy resumes dispensing controlled substances, respondents would re-institute the inventory control measures pertaining to controlled substances.

¹¹ Respondent Youssef's pharmacy technician license had not been subject to discipline until November 23, 2017. The Board's November 23, 2017 revocation of respondent Youssef's license was based on an investigation of a second pharmacy he owned. The impetus for that investigation was respondents' report of the theft from respondent Pharmacy to the Board.

47. On February 8, 2017, the DEA reinstated respondent Pharmacy's registration, thereby allowing respondent Pharmacy to resume dispensing controlled substances. However, since notification of the theft, Cardinal has refused to distribute controlled substances to respondent Pharmacy. Currently, respondent Pharmacy is operating, but it no longer fills prescriptions for controlled substances.

48. Respondents took responsibility for the theft. Respondent Youssef testified he was the "head" of respondent Pharmacy and therefore any lapses were his. Respondent Andrawes expressed great remorse for her failure to detect the theft. In retrospect, respondents acknowledge their trust blinded them of signals from Peter, such as his purchase of a new car and a house, which might have indicated that something was awry. Respondents Youssef and Andrawes both appeared traumatized by Peter's betrayal, and respondent Andrawes insisted that she had learned from her past mistakes. The testimony of both Youssef and Andrawes was sincere, forthright and emotional.

Character Evidence

49. Three character witnesses and respondent Youssef attested to respondent Andrawes' integrity, honesty, and dedication. Two of the character witnesses also knew respondent Youssef and vouched for his good character as well. All the witnesses had knowledge of the magnitude of the theft that had occurred at respondent Pharmacy.

50. John Kolta has been a licensed pharmacist since 1986 and currently owns his own pharmacy. He is also a deacon at his church. He worked at a former iteration of respondent Pharmacy for approximately ten years starting in 1996. During this time, respondent Andrawes was the pharmacist at another pharmacy several blocks away. As a new pharmacist, Mr. Kolta would often call respondent Andrawes, who was more experienced, to seek her advice on issues arising in the day to day business of the pharmacy. Mr. Kolta also has interacted with respondent Andrawes on a personal level quite often since he left respondent Pharmacy's employ. According to Mr. Kolta, respondent Andrawes is an honest, ethical pharmacist who cares about her patients. He believes respondent Andrawes was an asset to the pharmacy profession and that society would benefit if there were more pharmacists like her.

51. Through his work at respondent Pharmacy, Mr. Kolta came to know respondent Youssef in a professional capacity. According to Mr. Kolta, respondent Youssef always placed the needs of the pharmacy's patients first. He also knows respondent Youssef through his church, where respondent Youssef is a congregant. Mr. Kolta vouched for respondent Youssef's honesty and believed respondent Youssef did not have "the capability of doing something that is dishonest."

52. Father Harvey Ragheb has known respondent Andrawes for approximately twenty years. Before becoming a priest, Father Ragheb was a licensed pharmacist from 1985 to approximately 2013, and he worked with respondent Andrawes in the 1980's and 1990's. Father Ragheb described respondent Andrawes as a "very strict pharmacist" who "went by the book." He also vouched for respondent Andrawes' honesty.

53. Respondents Andrawes and Youssef are currently members of Father Ragheb's congregation. He believes them both to be good Christians and dedicated to doing the "right thing."

54. Christine Barhoma, a licensed pharmacist in California since 2012, has known respondent Andrawes for over 25 years. According to Ms. Barhoma, respondent Andrawes was the person who inspired her to become a pharmacist. Based on Ms. Barhoma's observations of respondent Andrawes at work, she believes that Ms. Andrawes has an excellent rapport with her customers and is a valuable resource for those customers as well as the community respondent Andrawes serves and the physicians who rely on her. Ms. Barhoma did not believe that respondent Andrawes is a danger to the public. Nor did she doubt respondent Andrawes' credibility; she finds respondent Andrawes to be an "ethical" and "responsible" person and pharmacist.

55. Respondent Youssef has known respondent Andrawes since 1994. He also believes respondent Andrawes to be an "excellent pharmacist." He finds her to be "honest" and he has been always satisfied with her job performance notwithstanding the theft.

Costs

56. The Board incurred investigation costs in the amount of \$12,778.50, and prosecution costs the amount of \$21,247.50, for total costs of \$34,026. These costs are reasonable pursuant to section 125.3.

57. Respondent Andrawes is the sole wage earner in her family and supports her husband, who is in ill health and does not work. She is responsible for a mortgage, monthly car payments, health insurance, and other living expenses. She testified that she would not be able to pay the Board's costs without assistance from respondent Youssef.

58. Respondent Youssef testified he could pay the Board's costs with a loan from the bank or pursuant to a payment plan.

LEGAL CONCLUSIONS

Applicable Law

1. Respondent Andrawes holds a professional license. Accordingly, to impose discipline on her license, complainant must prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Sternberg v. California State Bd. of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171 (*Sternberg*); *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability," and has been described as "requiring that the evidence be 'so clear as to leave no substantial doubt'" and "sufficiently strong to command the unhesitating assent of every reasonable mind. [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

2. In contrast, respondent Pharmacy's pharmacy permit is a nonprofessional license because, unlike a professional license, it does not require extensive educational, training, or testing. (See *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) An applicant for a pharmacy permit need not be a pharmacist; instead, the applicant must designate a PIC with the requisite education, training, and licensure. (§§ 4110, subd. (a), 4113, subd. (a).) To impose discipline on respondent Pharmacy's nonprofessional pharmacy permit, complainant must prove cause for discipline by a preponderance of the evidence, which is a lower standard of proof than clear and convincing evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917 (*Imports Performance*); Evid. Code, §115.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Respondents' Vagueness Contention

3. As a result of the theft or diversion of more than 270,000 tablets and approximately 700 bottles of controlled substances between March 4, 2013 and February 18, 2015, complainant contends that respondents are subject to discipline for the failure to (1) maintain pharmacy facilities, space, fixtures, and equipment so that drugs were safely maintained and secured, in violation of Regulation¹² 1714, subdivision (b); and (2) effect controls in the pharmacy department to ensure against theft or diversion of dangerous drugs and devices in violation of Regulation 1714, subdivision (d). Respondents contend that Regulation 1714, subdivisions (b) and (d), are too vague to support complainant's claims for discipline.

4. Regulation 1714 states, in relevant part, as follows:

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

[¶] . . . [¶]

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to the pharmacist. . .

¹² All references to a Regulation are to title 16 of the California Code of Regulations.

5. Respondents complain that these regulations are “arbitrary and subjective” because they do not identify the kinds of measures that are required to “ensure that drugs are safely and properly prepared, maintained, secured, and distributed.” Nor, according to respondents, do the regulations specify what procedures and policies a pharmacist needs to implement to effectively “control against theft or diversion of dangerous drugs.”

6. Respondents’ contention that the subject regulations are too vague to be enforceable is not persuasive. First, respondents misconstrue the purpose of the regulations. The regulations’ principal aim is not to require pharmacies and pharmacists to implement specific measures, but rather their purpose is to allocate responsibility for the operations of the pharmacy. Under the regulatory scheme, the pharmacy owner is charged with maintaining the pharmacy’s physical plant, equipment, and fixtures to ensure a safe environment for dispensing drugs while the pharmacist is responsible for implementing policies and procedures to secure the prescription department. The pharmacy owner and pharmacist are liable for any lapse in security in their respective areas, regardless of any measures taken. (Cf. *Sternberg, supra*, 239 Cal.App.4th at 1168-1169 [imposing strict liability on PIC for failure to maintain accurate inventory records despite lack of knowledge of improper conduct leading to inaccurate records].)

7. In addition, in considering a vagueness challenge to an administrative regulation, the courts have looked to the “complaining party’s conduct in light of the specific facts of the particular case.” (*Teicher Const. v. California Occupational Safety and Health Appeals Bd.* (2006) 140 Cal.App.4th 883, 890-891, citing *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 765.) Courts have upheld regulations if they “can be given a reasonable and practical construction that is consistent with probable legislative intent and encompasses the conduct of the complaining party.” (*Ibid.*) Where “the language of a statute fails to provide an objective standard by which conduct can be judged, the required specificity may nonetheless be provided by the common knowledge and understanding of members of the particular vocation or profession to which the statute applies.” (*Cranston, supra*, 40 Cal.3d at 765.) Thus, regulations need not spell out every requirement and can leave it to the employer or owner to determine the “most appropriate way” to effect the legislative intent. (See *ibid* [upholding regulation prohibiting “conduct unbecoming an employee of the City Service”]; *Teicher, supra*, 140 Cal.App.4th at 891 [upholding regulation that required hauling operations “be controlled in such a manner” to ensure that equipment operators know of presence of workers on foot in surrounding area, even though regulation did not specify the nature of such control]; *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 368-369 (*Ford Dealers*) [upholding regulations requiring car advertisements to be “clearly set forth, and based on facts” and qualifying statements in those advertisements to be “large enough and displayed for a sufficient period of time” to enable the average reader to comprehend them].) As the court in *Ford Dealers*, stated:

The fact that the exact reach of the statute must be determined through application does not thereby render it vague. . . . The attribute of generality does not of itself . . . require a holding of nullity for vagueness.... ¶¶ [I]t would be impossible to draft in

advance detailed plans and specifications of all acts and conduct to be prohibited [citations], since unfair or fraudulent business practices may run the gamut of human ingenuity and chicanery.

(32 Cal.3d at 368-369, citing *People ex.rel. Mosk v. National Research Co. of Cal.* (1962) 201 Cal.App.2d 765, 772.)

8. Considering the differences in physical size and layout, geographical location, patient populations, and staffing among California pharmacies, it would not be possible for the Board to set forth specific guidelines covering all possible scenarios that might fall within the mandates of these regulations. The pharmacy owner and pharmacist have the requisite expertise to determine the optimal way to secure the safe dispensing of drugs and to guard the pharmacy and the prescription area against theft. The standards set by Regulation 1714, subdivisions (b) and (d), are therefore reasonable and provide sufficient guidance to which a pharmacy owner and a pharmacist can conform his or her conduct. The regulations are not impermissibly vague.

First Cause for Discipline – Operational Security

9. Complainant has not established that respondent Pharmacy violated Regulation 1714, subdivision (b). As set forth in Factual Finding 21, respondent Pharmacy had a working security alarm, bars on its windows, and operational monitoring cameras. Respondent Pharmacy kept its Schedule II controlled substances in a locked cabinet. No evidence was presented of respondent Pharmacy's failure to properly maintain its facilities, space, fixtures, and equipment. Nor was any evidence critical of respondent Pharmacy's size or layout.

10. The factual circumstances presented here regarding respondent Pharmacy's ordering system are markedly different than those presented in *Sternberg*. In *Sternberg*, the court upheld the Board's discipline of a PIC (Sternberg) following his discovery of the widespread theft of dangerous drugs committed by a pharmacy technician. The court interpreted Regulation 1714, subdivision (b), to include the pharmacy's telephone ordering system. It found that Sternberg violated Regulation 1714, subdivision (b), by sharing the password to the pharmacy's telephone ordering system with the pharmacy technician and by allowing the pharmacy technician to use the password to access the telephone ordering system offsite and afterhours. (239 Cal.App.4th at 1171.) Unlike in *Sternberg*, respondent Andrawes was the only person who had the password to the drug ordering website at respondent Pharmacy, and drugs could only be ordered on respondent Pharmacy's computer during business hours. (Factual Finding 23.) No evidence was presented that Peter or any other respondent Pharmacy employee could access the ordering website offsite or after business hours.

11. Accordingly, cause does not exist to discipline respondent Pharmacy for violation of Regulation 1714, subdivision (b).

Second Cause for Discipline – Security of Pharmacy Department

12. Complainant contends that respondent Andrawes failed to maintain the security of the pharmacy prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, in violation of Regulation 1714, subdivision (d), by failing to detect and prevent the theft of approximately 270,000 tablets and 700 pint bottles of controlled substances over a period of two years.¹³

13. As set forth in Factual Findings 22 through 26, complainant established that respondent Andrawes violated Regulation 1714, subdivision (d), by failing to maintain effective inventory control and supervision over the ordering and delivery of controlled substances. The evidence demonstrates that the theft could have been averted altogether or detected sooner if respondent Andrawes had reviewed respondent Pharmacy's orders more closely, supervised and randomly audited drug deliveries, and more actively participated in the inventory and delivery process. The fact that Peter, an employee of respondent Pharmacy, committed the thefts while under respondent Andrawes' supervision demonstrated the lack of control respondent Andrawes maintained over her inventory. Although her lack of vigilance stemmed in large part from her inordinate amount of trust in the respondent Pharmacy's employees, particularly Peter, respondent Andrawes is ultimately responsible, regardless of the reason, for security of respondent Pharmacy. (Legal Conclusions 6 through 8.)

14. Cause also exists to discipline respondent Pharmacy, as respondent Andrawes' employer, based on respondent Andrawes' violation of Regulation 1714, subdivision (d).¹⁴ (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192-93, overruled on another point as stated in *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658 [corporation's license subject to discipline for the violations of its agents or employees]; see also *California Assn. of Health Facilities v. Dept. of Health*

¹³ The Accusation sought discipline of respondent Youssef for violation of Regulation 1714, subdivision (d); however, because respondent Youssef's license has already been revoked, it can no longer be subject to discipline. In addition, respondent Youssef is not a licensed pharmacist, and his conduct therefore does not fall within the scope of the regulation. Complainant's closing brief suggests that respondent Youssef was named in the Second Cause for Discipline as owner of respondent Pharmacy but nothing in the Accusation supports this suggestion.

¹⁴ The Accusation does not specifically name respondent Pharmacy as a liable party in the Second Cause of Discipline. However, as respondent Pharmacy was informed of the substance of the charge and afforded basic, appropriate elements of procedural due process, the variance between the Accusation and the proof is immaterial. (See *Stearns v. Fair Employment Practice Com.* (1971) 6 Cal.3d 205, 212-213, citing Cal. Code Civ. Proc. § 469 [respondent not entitled to complain of variance between administrative pleadings and proof if procedural due process requirements are satisfied].)

Services (1997) 16 Cal.4th 284, 296 [“[A] licensee will be held liable for the acts of its agents”].)

15. Accordingly, cause exists to discipline respondents Andrawes and Pharmacy for violation of Regulation 1743, subdivision (d).

Third Cause for Discipline – Delivery of Dangerous Drugs

16. The Accusation alleges that respondents Andrawes and Pharmacy are subject to discipline because non-pharmacists at respondent Pharmacy signed for and received dangerous drugs upon delivery on 17 separate occasions between December 5, 2014, and January 20, 2015, in violation of section 4059.5, subdivision (a). Section 4059.5, subdivision (a), provides: “Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.”

17. Cause does not exist to discipline respondents Pharmacy and Andrawes for violation of section 4059.5, subdivision (a). Respondent Andrawes did not dispute that respondent Pharmacy’s policy was that anyone could sign for Federal Express packages. However, as set forth in Factual Findings 29 through 32, complainant’s evidence is insufficient to establish that respondent Pharmacy received the 17 deliveries from API identified in the Accusation and that those deliveries were signed for by non-pharmacists.

Fourth Cause for Discipline – Improper Prescription Practices

18. Complainant contends that respondent Andrawes improperly filled five prescriptions in violation of Health and Safety Code sections 11162.1, subdivision (a), and 11164. Health and Safety Code section 11162.1, subdivision (a), requires that prescriptions for controlled substances are written on specified forms that contain certain pre-printed patterns, watermarks, and other features; faxed prescriptions are exempt from some of the requirements. Health and Safety Code section 11164 provides that a pharmacist cannot fill or dispense a prescription for a controlled substance if the prescription does not meet the requirements of Health and Safety Code section 11162.1. In addition, Health and Safety Code section 11164 requires that all prescriptions for controlled substances be signed and dated in ink by the prescribing doctor, even if they are faxed to the pharmacy.

19. Respondent Andrawes admitted that she improperly filled the five prescriptions in violation of the statutory requirements. (Factual Findings 33, 34.) Cause therefore exists to impose discipline on respondents Andrawes and Pharmacy for violation of Health and Safety Code section 11164.

Fifth Cause for Discipline – Improper Prescription Practice

20. Complainant has alleged that respondents Andrawes and Pharmacy violated Health and Safety Code sections 11170 and 11171 by filling a prescription for a controlled substance written by a doctor for his own use. Health and Safety Code section 1170 provides that “No person shall prescribe, administer, or furnish a controlled substance for himself.” Health and Safety Code section 11171 provides that “No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

21. Respondent Andrawes did not prescribe, administer or furnish a prescription for a controlled substance for her own use. However, she admitted she improperly filled a proscription for a controlled substance written by a doctor for his own use. Cause therefore exists to impose discipline on respondents Andrawes and Pharmacy for violation of Health and Safety Code section 11171. (Factual Finding 35.)

Sixth Cause for Discipline – Unprofessional Conduct

22. The Board may suspend, revoke, or refuse to issue any license, permit, or registration for unprofessional conduct. (§§ 4032, 4300, subds. (a), (c), 4301; see *Hoang v. California State Bd. of Pharmacy* (2014) 230 Cal.App.4th 448, 456.) Unprofessional conduct includes “the commission of an 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.” (§ 4301, subd. (f))

23. Complainant contends that respondent Andrawes is subject to disciplinary action under section 4301, subdivision (f), based on her admission that “she ordered Schedule II controlled substances on numerous occasions, without having power of attorney to do so until March 3, 2015, by using the name and signature of respondent Youssef, as the owner of Pacific Plaza Pharmacy on controlled substance order forms.” (Accusation, ¶ 35.) Complainant also contends that respondent Andrawes engaged in unprofessional conduct when she initially told the DEA investigators and the Board inspectors that respondent Youssef always signed the DEA Form 222s, but later admitted that she signed respondent Youssef’s name on the forms.

24. Cause does not exist to discipline respondent Andrawes pursuant to section 4301, subdivision (f). As set forth in Factual Findings 36 through 39, respondent Andrawes signed respondent Youssef’s name on the DEA Form 222s because respondent Youssef verbally authorized her to do so. Respondent Youssef was aware that respondent Andrawes ordered Schedule II controlled substances in his name. Respondent Youssef’s failure to provide respondent Andrawes with a written power of attorney formally authorizing respondent Andrawes to order Schedule II controlled substances was due to inadvertence and negligence rather than an intentional deceptive act. Respondent credibly testified, particularly considering her difficulties with speaking English at times, that she was scared, confused and overwhelmed by the DEA / Board inspection and may not have fully understood their questions. Under these circumstances, complainant has not established by

clear and convincing evidence that respondent Andrawes' signature of respondent Youssef's name on the DEA Form 222s prior to March 3, 2015 and her statement to the DEA agents were acts involving deception, fraud, dishonesty, deceit, or corruption.

Level of Discipline

25. A determination that cause exists to discipline respondents' licenses does not end the inquiry. Such cause may be overcome with substantial, persuasive evidence of rehabilitation and good character. The Board has compiled a list of 15 factors to evaluate whether a licensee has been rehabilitated from prior misconduct. In this case, they apply as follows:

(1) *Actual or potential harm to the public.* Here, the theft of dangerous drugs from respondent Pharmacy was extensive, involving over 270,000 tablets and approximately 700 bottles of Schedule III-V controlled substances. The ingestion of these drugs could have potentially harmed members of the public who consumed them without the express guidance and instruction of a physician. In addition, filling prescriptions for controlled substances that do not meet the statutory requirements undermines governmental controls to ensure such prescriptions are legitimate.

(2) *Actual or potential harm to any consumer.* There was no evidence of actual harm to any specific consumer. However, filling prescriptions based on improper prescription forms could potentially harm the consumer as the prescription might not have been issued under proper medical guidance.

(3) *Prior disciplinary record, including level of compliance with disciplinary order(s).* Respondents Pharmacy and Andrawes have no prior disciplinary records. Respondent Youssef's pharmacy technician license was revoked after this Accusation had been filed.

(4) *Prior warning(s), including citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).* Respondent Andrawes received a citation approximately 14 years ago for not wearing her name tag while on duty as a pharmacist. None of the respondents had received any prior warnings from the Board or the DEA of any inadequacy in their inventory control or prescribing policies or practices.

(5) *Number and/or variety of current violations.* Complainant established three causes for discipline, all involving violations of laws and regulations designed to prevent drug losses and the improper dispensation of controlled substances.

(6) *Nature and severity of the act(s), offense(s) or crime(s) under consideration.* Although respondents' lapses led to the theft of a staggering amount of controlled substances, the specific offenses, i.e., failing to secure the pharmacy to prevent the loss of controlled substances and improperly filling prescriptions, constitute a mix of Category I and Category II violations.

(7) *Aggravating Evidence.* None

(8) *Mitigating Evidence.* Respondents fully cooperated with all involved governmental agencies to determine the scope and nature of the theft. (Factual Finding 44.) Respondents ensured the physical security of respondent Pharmacy. (Factual Finding 21.) They also implemented some measures to ensure against theft or diversion of dangerous drugs from the pharmacy department. (*Id.*) Because of respondents' security measures, no then-designated Schedule II controlled substances were stolen or reported missing. (Factual Finding 45.) The theft was the result of a deliberate and calculated act by respondents' employee who earned and then exploited respondents' trust. (Factual Finding 26.) The actions of Cardinal and API contributed to the failure to discover the losses. (Factual Finding 28.) With respect to respondents' improper prescription practices, the number of improperly-filled prescriptions was small, the prescriptions filled were from known individuals who worked in the building, and no evidence was presented of any wrongdoing regarding the individuals receiving the controlled substances.

(9) *Rehabilitation Evidence.* Respondents took full responsibility for their failure to detect and to avert the theft. (Factual Finding 48.) Respondent Andrawes also acknowledged her responsibility for the improperly filled prescriptions. (Factual Findings 34, 35.) As detailed in Factual Finding 46, respondents have instituted corrective measures to prevent such losses in the future. They now recognize their mistake in trusting their employees. Respondents have also demonstrated rehabilitation through the testimony of several character witnesses who vouched for respondents' honesty, dedication, and professionalism. (Factual Findings 49 through 55.) The DEA has also reinstated respondent Pharmacy's registration. (Factual Finding 47.)

(10) *Compliance with terms of any criminal sentence, parole, or probation.* This factor is not applicable.

(11) *Overall criminal record.* This factor is not applicable.

(12) *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to section 1203.4 of the Penal Code.* This factor is not applicable.

(13) *Time passed since the act(s) or offense(s).* The violations and drug losses were discovered in February 2015. Respondents have not committed any disciplinary violations since that time.

(14) *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.* Respondents' conduct was negligent in that they failed to institute adequate controls over the ordering and delivery of controlled substances to ensure against internal theft. (Factual Findings 25, 26.) There was no evidence that respondents knew about the theft and failed to report it. (Factual Finding 45.) Nor did respondents' failure to detect the theft demonstrate

incompetence. Respondents appear to have been blinded by their inordinate trust in their employees. However, once respondents were alerted to the theft, they took immediate action to determine its scope and prevent its recurrence.

(15) *Financial benefit to the respondent from the misconduct.* No evidence suggests respondents financially benefitted from the misconduct. To the contrary, respondent Pharmacy suffered financial loss because it paid for controlled substances that it did not sell.

26. Under Regulation 1760, the Board developed *A Manual of Disciplinary Guidelines and Model Disciplinary Orders* (rev. 10/2007) (*Guidelines*). The *Guidelines* recommend ranges of discipline for certain violations. Under the *Guidelines*, the Board recognizes that individual cases may necessitate a departure from the *Guidelines*. According to the *Guidelines*, respondents' violations of Regulation 1714, subdivision (d), and Health and Safety Code section 11171 are Category I violations, warranting discipline ranging from one year of probation with conditions to revocation. Respondents' violation of Health and Safety Code section 11164 is a Category II violation, warranting discipline from three years of probation to revocation. In instances where self-administration or diversion of controlled substances occurred at the licensed premises and probation is ordered, the *Guidelines* recommend a five-year probationary term instead of the usual term of three years.

27. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) Thus, the level of discipline imposed by the Board in *Sternberg*, which involved the theft or diversion of 216,630 tablets of dangerous drugs over 18 months, was three years of probation, evidencing a departure from the *Disciplinary Guidelines*, which recommended a minimum of five years of probation. In this matter, a similar departure from the *Disciplinary Guidelines* is warranted. Although the theft in this matter was greater than in *Sternberg*, respondents committed significantly fewer violations than those noted in *Steinberg* and implemented greater safety measures. Specifically, unlike *Steinberg*, respondents kept complete and accurate records for all controlled substances, they also secured Schedule II controlled substances in a locked cabinet, respondent Pharmacy was never left unsupervised by respondent Andrawes, and respondent Pharmacy employees were not allowed to order drugs offsite or after business hours. Considering these differences as well as respondents' lack of prior discipline (except for a de minimus name tag violation), their fidelity to the Board's and federal audit and reporting requirements, their cooperation with the Board and the DEA, the extensive internal security measures respondents have already implemented and those they intend to re-institute if they resume ordering controlled substances, respondents' acknowledgement of fault and responsibility, and the high regard for respondents from their colleagues and clergy, a three year period of probation with conditions is more than sufficient to protect the public.¹⁵

¹⁵ Unlike *Sternberg*, the officially-noticed Board decisions submitted by the parties did not detail the facts and circumstances giving rise to the ordered discipline. The discipline imposed in those matters therefore was not of much guidance.

28. For the same reasons and considering that the Board already will have sufficient probationary oversight of respondent Pharmacy, the public will be adequately protected if respondent Andrawes continues serving as the PIC of respondent Pharmacy during the period of probation. Allowing respondent Andrawes to continue to serve as the PIC of respondent Pharmacy is further warranted because respondent Pharmacy is currently not dispensing controlled substances. As such, Probation Condition No. 7 as to Respondent Andrawes set forth in the Order below, shall not apply to respondent Andrawes as the PIC of respondent Pharmacy. In addition, Probation Condition No. 16, requiring the reporting of the acquisition and disposition of controlled substances shall apply if respondent Pharmacy resumes filling prescriptions of controlled substances.

29. Complainant also seeks to prohibit respondent Andrawes and respondent Youssef from serving as managers, administrators, members, officers, directors, trustees, associates, or partners of any additional business, firm, partnership, or corporation licensed by the Board for five years if respondent Pharmacy's license is placed on probation. Section 4307 provides in relevant part as follows:

[If respondent Andrawes or respondent Youssef] while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

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

[¶] . . . [¶]

(b) "Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license" as used in this section and Section 4308 , may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

30. No evidence was submitted demonstrating that respondent Youssef had knowledge of the theft or of respondent Andrawes' inventory control methods or prescribing practices. Although respondent Andrawes was not aware of the theft, she did have knowledge of respondent Pharmacy's order and delivery practices for Schedule III-V controlled substances, and she was responsible for improperly filling six prescriptions. Accordingly, an order under section 4307 against respondent Andrawes precluding her for the length of her probation from serving as a manager, administrator, member, officer,

director, trustee, associate, or partner of any additional business licensed by the Board will further ensure the protection of the public.

Costs

31. Under Code section 125.3, the Board may request the administrative law judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$34,026, as set forth in Factual Finding 57.

32. Under *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards to avoid deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Board] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position, if the licensee has raised a colorable defense, and the licensee's ability to make payment.

33. These factors support a reduction in costs. Respondents used the process to demonstrate that half of the causes of discipline were not supported by the evidence. In addition, respondent Youssef, without an operable pharmacy technician license, is no longer subject to the Board's jurisdiction in such capacity. Under these circumstances, it is reasonable to reduce the costs by 33% to \$22,797. Accordingly, respondent Andrawes and respondent Pharmacy shall pay the Board its costs in the amount of \$22,797 and shall be jointly and severally liable, accordingly.

ORDER

Respondent Nadia Andrawes

Pharmacist License Number RPH 42542 issued to Respondent Nadia Andrawes is revoked; however, the order of revocation is stayed and Respondent Nadia Andrawes is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws:** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:
 - an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

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

6. **Notice to Employers.** During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 2016120423 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 2016120423, and terms and

conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 2016120423 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 2016120423 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

This probationary provision shall not apply to Respondent Andrawes, as pharmacist in charge at Respondent Pharmacy (i.e., Pacific Plaza Pharmacy, Inc.), her duties thereto, or her employment therein.

8. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$22,797. Respondent shall make said payments on a schedule to be determined by the Board. Respondent Andrawes and Respondent Pharmacy shall be jointly and severally liable for the total amount of \$22,797.

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

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

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

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

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

Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

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

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

13. **Tolling of Probation.** Respondent is required to practice as a pharmacist in a licensed pharmacy setting that dispenses medication for a minimum of one year prior to the completion of probation. After the first year of probation, the Board or its designee may

consider a modification of this requirement. If Respondent fails to comply with this requirement or a subsequent modification thereto, such failure shall be considered a violation of probation.

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

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

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

16. **Report of Controlled Substances.** If Respondent Pharmacy resumes dispensing controlled substances, Respondent shall submit quarterly reports to the Board detailing the total acquisition and disposition of such controlled substances as the Board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than 10 days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

17. **No Ownership of Licensed Premises.** Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the Board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

Respondent Pharmacy

Permit Number PHY 44905 issued to Respondent Pacific Plaza Pharmacy, Inc., is revoked; however, the order of revocation is stayed and Respondent Pharmacy is placed on probation for three years upon the following terms and conditions:

1. **Obey All Laws.** Respondent owner shall obey all state and federal laws and regulations. Respondent owner shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

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

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

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

4. **Cooperate with Board Staff.** Respondent owner shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's

compliance with the terms and conditions of its probation. Failure to cooperate shall be considered a violation of probation.

5. **Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, Respondent owner shall pay to the Board its costs of investigation and prosecution in the amount of \$22,797, unless already satisfied pursuant to Probation Condition 8 listed above pertaining to Respondent Andrawes. Respondent shall make such payments on a reasonable schedule to be determined by the Board. Respondent Pharmacy and Respondent Andrawes shall be jointly and severally liable for the amount of \$22,797.

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

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

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

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

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

Upon acceptance of the surrender, Respondent owner shall relinquish the premises wall and renewal license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent owner shall further submit a completed Discontinuance of Business form according to Board guidelines and shall notify the Board of the records inventory transfer.

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

Respondent owner may not apply for any new licensure from the Board for three years from the effective date of the surrender. Respondent owner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

Respondent owner further stipulates that it shall reimburse the Board for its costs of investigation and prosecution prior to the acceptance of the surrender.

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

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

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

11. **Posted Notice of Probation.** Respondent owner shall prominently post a probation notice provided by the Board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

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

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

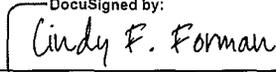
12. **Violation of Probation.** If a Respondent owner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent license, and probation shall be automatically extended until all terms and conditions have been satisfied or the Board has taken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

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

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

14. **Report of Controlled Substances.** If Respondent Pharmacy resumes dispensing controlled substances, Respondent owner shall submit quarterly reports to the Board detailing the total acquisition and disposition of such controlled substances as the Board may direct. Respondent owner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent owner shall report on a quarterly basis or as directed by the Board. The report shall be delivered or mailed to the Board no later than 10 days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

DATE: April 30, 2018

DocuSigned by:

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5688

11 **PACIFIC PLAZA PHARMACY INC.,**
12 **NADIA A. ANDRAWES, PIC, NAGI M.**
13 **YOUSSEF, PRESIDENT, OWNER, SOLE**
SHAREHOLDER
14 **2777 Pacific Ave., Ste. A**
Long Beach, CA 90806
15 **Pharmacy Permit License No. PHY 44905,**

A C C U S A T I O N

16 **NADIA A. ANDRAWES**
17 **6490 Surry Drive**
Long Beach, CA 90815
18 **Registered Pharmacist No. RPH 42542,**

19 **NAGI M. YOUSSEF**
20 **275 S. San Gabriel Blvd.,**
Pasadena, CA 91107-4893
21 **Pharmacy Technician No. TCH 30442,**

Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about August 15, 2000, the Board of Pharmacy ("Board") issued Pharmacy
27 Permit License Number PHY 44905 to Pacific Plaza Pharmacy Inc., Nadia A. Andrawes,
28 pharmacist in charge ("PIC"), Nagi M. Youssef, President, owner, and sole shareholder ("Pacific

1 Plaza Pharmacy”). The Pharmacy Permit License was in full force and effect at all times relevant
2 to the charges brought herein and will expire on August 1, 2017, unless renewed.

3 3. On or about April 14, 1989, the Board issued Registered Pharmacist License Number
4 RPH 42542 to Nadia A. Andrawes (“Andrawes”). The Registered Pharmacist License was in full
5 force and effect at all times relevant to the charges brought herein and will expire on August 31,
6 2018, unless renewed. Andrawes has been the PIC of Pacific Plaza Pharmacy from September
7 18, 2006, to the present.

8 4. On or about August 24, 1999, the Board issued Pharmacy Technician License
9 Number TCH 30442 to Nagi M. Youssef (“Youssef”). The Pharmacy Technician License was in
10 full force and effect at all times relevant to the charges brought herein and will expire on October
11 31, 2016, unless renewed. Youssef has been the president and sole shareholder of Pacific Plaza
12 Pharmacy from August 15, 2000, to the present.

13 **JURISDICTION**

14 5. This Accusation is brought before the Board of Pharmacy, Department of Consumer
15 Affairs, under the authority of the following laws. All section references are to the Business and
16 Professions Code (“Code”) unless otherwise indicated.

17 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
18 surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of
19 jurisdiction to proceed with a disciplinary action during the period within which the license may
20 be renewed, restored, reissued or reinstated.

21 **STATUTORY PROVISIONS**

22 7. Section 4059.5 of the Code provides, in pertinent part, that:

23 “(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices
24 may only be ordered by an entity licensed by the board and shall be delivered to the licensed
25 premises and signed for and received by a pharmacist. Where a licensee is permitted to operate
26 through a designated representative, the designated representative shall sign for and receive the
27 delivery. . . .”

28 ///

1 8. Section 4301 of the Code provides, in pertinent part, that:

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

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

8 9. Section 4307 of the Code provides, in pertinent part, that:

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

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

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

22 “(b) ‘Manager, administrator, owner, member, officer, director, associate, or partner,’ as
23 used in this section and Section 4308, may refer to a pharmacist or to any other person who serves
24 in that capacity in or for a licensee. . . .”

25 10. Section 11153.5 of the Health and Safety Code provides, in pertinent part, that:

26 “(a) No wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer,
27 shall furnish controlled substances for other than legitimate medical purposes.

28

1 “(c) Factors to be considered in determining whether a wholesaler or manufacturer, or
2 agent or employee of a wholesaler or manufacturer, furnished controlled substances knowing or
3 having a conscious disregard for the fact that the controlled substances are for other than
4 legitimate medical purposes shall include, but not be limited to, whether the use of controlled
5 substances was for purposes of increasing athletic ability or performance, the amount of
6 controlled substances furnished, the previous ordering pattern of the customer (including size and
7 frequency of orders), the type and size of the customer, and where and to whom the customer
8 distributes the product.”

9 11. Section 11162.1 of the Health and Safety Code provides, in pertinent part, that:

10 “(a) The prescription forms for controlled substances shall be printed with the following
11 features:

12 “(1) A latent, repetitive ‘void’ pattern shall be printed across the entire front of the
13 prescription blank; if a prescription is scanned or photocopied, the word ‘void’ shall appear in a
14 pattern across the entire front of the prescription.

15 “(2) A watermark shall be printed on the backside of the prescription blank; the
16 watermark shall consist of the words ‘California Security Prescription.’

17

18 “(4) A feature printed in thermochromic ink. . . .”

19 12. Section 11164 of the Health and Safety Code provides, in pertinent part, that:

20 “Except as provided in Section 11167, no person shall prescribe a controlled substance, nor
21 shall any person fill, compound, or dispense a prescription for a controlled substance, unless it
22 complies with the requirements of this section.

23 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
24 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
25 as specified in Section 11162.1 and shall meet the following requirements:

26 “(1) The prescription shall be signed and dated by the prescriber in ink”

27 13. Section 11170 of the Health and Safety Code provides that “No person shall
28 prescribe, administer, or furnish a controlled substance for himself.”

1 18. Alprazolam, which is the generic name for the brand name Xanax, is a Schedule IV
2 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1),
3 and a dangerous drug according to Business and Professions Code section 4022. It is used to treat
4 anxiety.

5 19. Carisoprodol is a Schedule IV controlled substance as designated by Code of Federal
6 Regulations, title 21, section 1308.14, subdivision (c)(6), and a dangerous drug according to
7 Business and Professions Code section 4022. It is used to treat muscle spasms.

8 20. Clonazepam, which is the generic name for the brand name Klonopin and a member
9 of a class of drug known as benzodiazepines, is a Schedule IV controlled substance as defined in
10 Health and Safety Code section 11057, subdivision (d)(7), and a dangerous drug according to
11 Business and Professions Code section 4022. It is used to treat anxiety.

12 21. Diazepam, which is the generic name for the brand name Valium and is a
13 benzodiazepam derivative, is a Schedule IV controlled substance as designated by Health and
14 Safety Code section 11057, subdivision (d)(9), and a dangerous drug according to Business and
15 Professions Code section 4022. It is used to treat anxiety.

16 22. Hydrocodone-Acetaminophen, which is the generic name for the brand names Norco
17 (5mg/325mg, 7.5mg/325mg, 10mg/325mg) or Vicodin (7.5mg/750mg), is a Schedule II
18 controlled substance as designed by Code of Federal Regulations, title 21, section 1308, a
19 Schedule III controlled substance as designated by Health and Safety Code section 11056,
20 subdivision (e)(4), and a dangerous drug according to Business and Professions Code section
21 4022.

22 23. Phentermine, which is the generic name for the brand names of Adipex and Fastin, is
23 a Schedule IV controlled substance as designated by Health and Safety Code section 11057,
24 subdivision (f)(4), and a dangerous drug according to Business and Professions Code section
25 4022.

26 24. Promethazine-Codeine, is a Schedule V controlled substance as designated by Health
27 and Safety Code section 11058, subdivision (c)(1), and a dangerous drug according to Business
28 and Professions Code section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **Against Respondent Pacific Plaza Pharmacy**

3 **(Operational Standards and Security)**

4 25. Respondent Pacific Plaza Pharmacy is subject to disciplinary action under California
5 Code of Regulations, title 16, section 1714, subdivision (b), on the grounds that it failed to
6 maintain effective control of the security of the prescription department against theft or loss of
7 controlled substances and dangerous drugs.

8 26. The circumstances of the violation are that, in between March 4, 2013, and February
9 18, 2015, Respondents Pacific Plaza Pharmacy, Andrawes, as the pharmacist in charge, and
10 Youssef, as the President and sole shareholder of Pacific Plaza Pharmacy, failed to properly
11 account for the loss of the following controlled substances:

12 Acetaminophen-Codeine #4 300mg/60mg – 10,295 tablets

13 Alprazolam 1mg – 100 tablets

14 Alprazolam 2mg – 35,450 tablets

15 Carisoprodol 350mg – 41,655 tablets

16 Clonazepam 2mg – 511 tablets

17 Diazepam 10mg – 2,232 tablets

18 Hydrocodone-Acetaminophen 5mg/325mg – 3,899 tablets

19 Hydrocodone-Acetaminophen 7.5mg/325mg – 42,453 tablets

20 Hydrocodone-Acetaminophen 7.5mg/750mg – 19,234 tablets

21 Hydrocodone-Acetaminophen 10mg/325mg – 119,182 tablets

22 Promethazine-Codeine 10mg-6.25mg/5mL – 333,717

23 **SECOND CAUSE FOR DISCIPLINE**

24 **Against Respondents Andrawes and Youssef**

25 **(Operational Standards and Security)**

26 27. Respondents Andrawes, and Youssef are subject to disciplinary action under
27 California Code of Regulations, title 16, section 1714, subdivision (d), on the grounds that they
28 failed to maintain effective control of the security of the prescription department against theft or

1 loss of controlled substances and dangerous drugs. Complainant refers to and hereby expressly
2 incorporates the allegations set forth in paragraph 26, above, as through fully set forth herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **Against Respondents Pacific Plaza Pharmacy and Andrawes**

5 **(Delivery of Dangerous Drugs and Devices)**

6 28. Respondents Pacific Plaza Pharmacy and Andrawes are subject to disciplinary action
7 under Code section 4059.5, subdivision (a), on the grounds that, dangerous drugs or devices were
8 not delivered to and received by a licensed pharmacist or a designated representative as required.

9 29. The circumstances of the violation are that, in between December 5, 2014, and
10 January 20, 2015, dangerous drugs were shipped via FedEx from APIRX in Memphis, Tennessee,
11 to Pacific Plaza Pharmacy in Long Beach, California, and on approximately 17 occasions the
12 person who signed for and received delivery of those drugs at Pacific Plaza Pharmacy was not a
13 pharmacist or a designated representative.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **Against Respondents Pacific Plaza Pharmacy and Andrawes**

16 **(Required Forms for Controlled Substance Prescriptions)**

17 30. Respondents Pacific Plaza Pharmacy and Andrawes are subject to disciplinary action
18 under Health and Safety Code sections 11162.1, subdivision (a), and 11164 on the grounds that a
19 number of prescriptions for controlled substances were filled but should not have been due to the
20 fact that they were provided on nonconforming prescription forms.

21 31. Specifically, on or around February 13, 17, 23, and 24, 2015, Andrawes filled at least
22 five prescriptions for controlled substances even though they were printed on plain white paper
23 and/or were not signed and dated by the prescriber in ink as required.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **Against Respondents Pacific Plaza Pharmacy and Andrawes**

26 **(Prohibition of Prescribing Controlled Substance for Self)**

27 32. Respondents Pacific Plaza Pharmacy and Andrawes are subject to disciplinary action
28 under Health and Safety Code sections 11170 and 11171 on the grounds that a prescription for a

1 controlled substance was improperly filled when both the prescriber and patient were the same
2 person.

3 33. Specifically, on or around December 18, 2014, Andrawes filled a prescription for
4 Phentermine 37.5mg, a controlled substance, for Patient JA. The prescription, however, was
5 made out by Patient JA in his capacity as Doctor JA. Andrawes admitted that she knew that
6 Patient JA and Doctor JA were the same person.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **Against Respondent Andrawes**

9 **(Unprofessional Conduct)**

10 34. Respondent Andrawes is subject to disciplinary action under Code section 4301,
11 subdivision (f), on the grounds of unprofessional conduct, including the commission of any act
12 involving moral turpitude, dishonesty, fraud, deceit, or corruption.

13 35. The circumstances of the violation are that, on or around March 6, 2015, during an
14 inspection of Respondent Pacific Plaza Pharmacy, Andrawes admitted that she ordered Schedule
15 II controlled substances on numerous occasions, without having power of attorney to do so until
16 March 3, 2015, by using the name and signature of Respondent Youssef, as the owner of Pacific
17 Plaza Pharmacy, on controlled substance order forms.

18 **OTHER MATTERS**

19 36. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit License
20 No. PHY 44905 issued to Respondent Pacific Plaza Pharmacy, Inc., then Respondents Andrawes
21 and Youssef shall be prohibited from serving as managers, administrators, owners, members,
22 officers, directors, associates, or partners of a licensee for five years if Pharmacy Permit License
23 No. PHY 44905 is placed on probation or until Pharmacy Permit License No. PHY 44905 is
24 reinstated if it is revoked.

25 37. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit License
26 No. PHY 44905 issued to Respondent Pacific Plaza Pharmacy, Inc., while Respondents Andrawes
27 and/or Youssef have been managers, administrators, owners, members, officers, directors,
28 associates, or partners, and Respondents Andrawes and/or Youssef had knowledge of or

1 knowingly participated in any conduct for which Respondent Pacific Plaza Pharmacy, Inc., was
2 disciplined, then Respondents Andrawes and Youssef shall be prohibited from as managers,
3 administrators, owners, members, officers, directors, associates, or partners of a licensee for five
4 years if Pharmacy Permit License No. PHY 44905 is placed on probation or until Pharmacy
5 Permit License No. PHY 44905 is reinstated if it is revoked.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Permit License Number PHY 44905, issued to
10 Pacific Plaza Pharmacy Inc., Nadia A. Andrawes, PIC, Nagi M. Youssef, President, owner, and
11 sole shareholder;
- 12 2. Revoking or suspending Registered Pharmacist License Number RPH 42542, issued
13 to Nadia A. Andrawes;
- 14 3. Revoking or suspending Pharmacy Technician License Number TCH 30442, issued to
15 Nagi M. Youssef;
- 16 4. Prohibiting Nadia A. Andrawes from serving as a manager, administrator, owner,
17 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
18 License No. PHY 44905 is placed on probation or until Pharmacy Permit License No. PHY 44905
19 is reinstated if Pharmacy Permit License No. PHY 44905 issued to Pacific Plaza Pharmacy Inc., is
20 revoked;
- 21 5. Prohibiting Nagi M. Youssef from serving as a manager, administrator, owner,
22 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
23 License No. PHY 44905 is placed on probation or until Pharmacy Permit License No. PHY 44905
24 is reinstated if Pharmacy Permit License No. PHY 44905 issued to Pacific Plaza Pharmacy Inc., is
25 revoked;

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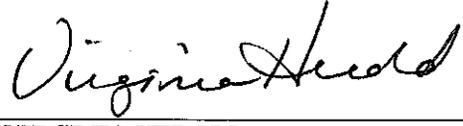
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6. Ordering Pacific Plaza Pharmacy, Nadia A. Andrawes, and Nagi M. Youssef to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 8/14/16



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

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