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

In the Matter of the Accusation Against: MISHNIK PHARMACY SERVICES, INC. dba Golden Life Pharmacy; MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH, President and Owner Original Permit No. PHY 48911, and MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH Pharmacist License No. RPH 57887, Respondents.	Case No. 5773 OAH No. 2017051100

DECISION AFTER RECONSIDERATION

The California State Board of Pharmacy (Board) adopted the Proposed Decision in this matter on March 13, 2018, and set it to become effective on April 12, 2018, at 5 p.m. Respondent Mohsen Abdel Amgad Masih, pharmacist license number RPH 57887, timely filed a Petition for Reconsideration pursuant to Government Code section 11521.

The Board granted reconsideration on April 12, 2018, requested argument, and stayed the effective date of its prior decision until the Board issued its decision following reconsideration. Respondent Masih timely submitted written argument. In his petition, respondent Masih asks only that one condition of probation be modified. Specifically, respondent requests that condition 13 of probation ("Tolling of Probation") be modified to reduce the number of hours that respondent must practice as a pharmacist per month to avoid tolling of probation.

Having now reviewed the matter, on reconsideration, the Board upholds its prior decision, except that it modifies probationary condition 13, Tolling of Probation, to reduce the number of hours respondent Masih is required to work each month to avoid tolling of probation from 120 to 40. No other changes are made to the condition.

The remainder of the February 5, 2018, Proposed Decision is adopted unchanged, and is incorporated herein by reference.

This Decision and Order will be effective at 5 p.m. on July 5, 2018.

IT IS SO ORDERED this 4th day of June, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Victor Law, R.Ph.
Board President

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

In the Matter of the Accusation Against: **MISHNIK PHARMACY SERVICES, INC.** **dba Golden Life Pharmacy;** **MOHSEN ABDEL AMGAD MASIH, aka** **AMGAD MOHSEN MASIH** Original Permit No. PHY 48911 and **MOHSEN ABDEL AMGAD MASIH, aka** **AMGAD MOHSEN MASIH** Pharmacist License No. RPH 57887 Respondents.	Case No. 5773 OAH No. 2017051100 **ORDER GRANTING** **PETITION FOR RECONSIDERATION** **AND STAY OF EXECUTION OF THE** **EFFECTIVE DATE OF DECISION AND** **ORDER**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter was adopted by the California State Board of Pharmacy (Board) on March 13, 2018, and it was set to become effective on April 12, 2018, at 5 p.m. Respondent Masih, Pharmacist License No. RPH 57887, timely filed a Petition for Reconsideration pursuant to Government Code section 11521. The petition having been read and considered, and good cause appearing, IT IS HEREBY ORDERED:

(1) That reconsideration be, and is, hereby granted, said reconsideration to be upon all pertinent parts of the record and such written argument as the parties may wish to submit, but no new evidence will be allowed;

(2) That the parties are given until April 26, 2018, to submit written argument to the Board at 1625 North Market Boulevard, Suite N219, Sacramento, California, 95834.

(3) That the effective date of the Board's March 13, 2018, Decision and Order in this matter is hereby stayed until the Board renders its decision after reconsideration.

IT IS SO ORDERED this 12th day of April 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against: MISHNIK PHARMACY SERVICES, INC. dba Golden Life Pharmacy; MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH Original Permit No. PHY 48911 and MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH Pharmacist License No. RPH 57887 Respondent.	Case No. 5773 OAH No. 2017051100

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 April 12, 2018.

It is so ORDERED on March 13, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against: MISHNIK PHARMACY SERVICES, INC. dba Golden Life Pharmacy; MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH Original Permit No. PHY 48911 and MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH Pharmacist License No. RPH 57887 Respondent.	Case No. 5773 OAH No. 2017051100

PROPOSED DECISION

This matter was heard by Nana Chin, Administrative Law Judge with the Office of Administrative Hearings (OAH), on December 4, 2017, in Los Angeles, California.

Heather Vo, Deputy Attorney General, appeared on behalf Virginia K. Herold (Complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Mishnik Pharmacy Services, Inc., doing business as Golden Life Pharmacy (Respondent Pharmacy), and Respondent Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih (Respondent Masih) were represented by Herb L. Weinberg, Attorney at Law. Respondent Masih was present during the hearing.

Protective orders were issued sealing the attachments to Exhibit 19 and Exhibit 23, which contained the disposition data for prescription medication.

The record was held open until December 18, 2017, to allow Complainant to provide briefing on the issue of when a pharmacist-in-charge is considered to be on duty. Respondent was provided until January 5, 2018, to submit a response. Complainant timely submitted its letter brief on December 18, 2017. The document was marked and admitted into evidence. No response was received by Respondent.

The record was closed and the matter submitted on January 5, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1a. The Board issued Original Permit Number PHY 48911 to Respondent Pharmacy. The pharmacy permit was in full force and effect at all relevant times. Respondent Masih has been the President, Vice-President, Secretary, Treasurer/Chief Financial Officer and 100 percent shareholder since January 8, 2008. Further, Respondent Masih was been its Pharmacist-in-Charge from January 8, 2008 until May 5, 2015. There is no history of prior discipline of the license.

1b. The Board issued Original Pharmacist License Number RPH 57887 to Respondent Masih on November 23, 2005. The license is scheduled to expire on March 31, 2019, unless renewed or revoked. There is no history of prior discipline of the license.

2. On February 13, 2017, Complainant filed the Accusation in her official capacity. Respondents filed a notice of defense on March 20, 2017, and this matter ensued.

Investigation

3. In June of 2015, the Board initiated an investigation of Respondent Pharmacy based on an analysis of the wholesaler data indicating that Respondent Pharmacy had purchased large quantities of promethazine with codeine[1] from January 1, 2014 through December 31, 2014.

4. Afrouz Nikmanesh, a Board inspector, conducted an inspection of Respondent Pharmacy on August 24, 2015. Respondent Masih assisted with the inspection. Though Inspector Nikmanesh did not testify at hearing, she had prepared investigation and inspection reports regarding the investigation which were admitted into evidence at hearing.

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[1] Promethazine with codeine is a narcotic drug containing nonnarcotic active medicinal ingredients and therefore is categorized as a Schedule V controlled substance under Health and Safety Code section 11058, subdivision (c), and as a dangerous drug under Business and Professions Code section 4022. It is used as a cough suppressant.

5a. At the time of the investigation, Hulda Nalley (Pharmacist license number RPH 44387) was the pharmacist-in-charge (PIC) of Respondent Pharmacy. Pharmacist Nalley was the PIC of Respondent Pharmacy from May 5, 2015 until November 13, 2015.

5b. Respondent Masih, however, was the individual who assisted Inspector Nikmanesh with the inspection.

6. As part of the inspection Inspector Nikmanesh requested the two most recent United States Drug Enforcement Administration (DEA) biennial inventories conducted by Respondent Pharmacy. Respondent Masih provided Inspector Nikmanesh inventories dated May 9, 2015 and December 16 and 17, 2012. Pursuant to Code of Federal Regulations section 1304.11, subdivision (c), registrants are required to take an inventory of all stocks of controlled substances on hand at least every two years.

7a. In order to conduct an audit of the promethazine with codeine at Respondent Pharmacy, Inspector Nikmanesh reviewed the December 2012 inventory with Respondent Masih and confirmed that the Respondent Pharmacy had only one bottle of promethazine with codeine syrup at Respondent Pharmacy.

7b. Inspector Nikmanesh also asked Respondent Masih to provide the following documents for Respondent Pharmacy: (1) a "Stock on Hand" form with the current hand count of the promethazine with codeine; (2) sample invoices of all the wholesalers Respondent Pharmacy purchased drugs from; and (3) the disposition records for Respondent Pharmacy from December 16, 2012 until August 24, 2015.

7c. Respondent Masih provided Inspector Nikmanesh the "Stock on Hand" form after conducting the hand count of the inventory of promethazine with codeine syrup and invoices from wholesalers Independent Pharmacy Cooperative, Cardinal Health and PARMED. As Respondent Masih was unable to obtain the dispensing records from the software company, Respondent Masih agreed to provide Inspector Nikmanesh the dispensing records by August 27, 2015.

8a. Following the August 24, 2015, inspection, Inspector Nikmanesh requested the records of sales of all brand and generic forms of promethazine with codeine syrup to Respondent Pharmacy from December 16, 2012, until August 24, 2015, from Independent Pharmacy Cooperative, Cardinal Health and PARMED.

8b. On August 27, 2015, Respondent Masih sent Inspector Nikmanesh an email which included a DEA biennial inventory dated May 15, 2012, and the disposition data for promethazine with codeine syrup at Respondent Pharmacy.

8c. On August 31, 2015, Independent Pharmacy Cooperative advised Inspector Nikmanesh that Respondent Pharmacy had not purchased any promethazine with codeine syrup during the period requested.

8d. On September 1, 2015, Inspector Nikmanesh was provided the acquisition data from both Cardinal Health and PARMED for sales of promethazine with codeine syrup to Respondent Pharmacy.

9a. On October 7, 2015, Inspector Nikmanesh conducted an audit of promethazine with codeine syrup at Respondent Pharmacy during the timeframe from December 16, 2012, until August 24, 2015 (audit period) using the following documents: (1) Respondent Pharmacy's Inventory of December 16-17, 2012; (2) disposition data provided by Respondent Masih; (3) acquisition data provided by Cardinal Health and PARMED; and (4) the "Stock on Hand" form provided to Inspector Nikmanesh during her August 2015, inspection.

9b. Inspector Nikmanesh determined that during the audit period Respondent Pharmacy could not account for the disposition of 494,658 mL (or approximately 1,045 pint sized bottles[2]) of promethazine with codeine syrup.

9c. Written notices were sent to Respondents on November 2, 2015, outlining Inspector Nikmanesh's findings during the inspection and investigation.

10a. As the disposition data provided by Respondent Masih indicated that only 149 prescriptions (or approximately 70,104 mL) of promethazine with codeine syrup had been filled during the audit period, Inspector Nikmanesh contacted Respondent Masih by email on October 28, 2015, to confirm the accuracy of the data he provided.

10b. Respondent Masih responded by email confirming that only 149 prescriptions (or 70,104 mL) of promethazine with codeine had been dispensed during the audit period. Respondent Masih also attached a spreadsheet confirming the disposition data.

11a. On November 6, 2015, Inspector Nikmanesh ceased her employment with the Board. Supervising Inspector Antony Ngondara reviewed Inspector Nikmanesh's Investigation Report and the attached exhibits and communicated with Respondent Masih and his attorney by email.

11b. Following Inspector Ngondara's review of the evidence, he determined that Inspector Nikamensh's reported stock on hand amount may be inaccurate. Inspector Nikmanesh calculated the stock on hand of the promethazine with codeine to be 17,028 mL. Inspector Ngondara, however, calculated the stock on hand to be 16,785 mL.

11c. In addition, after corresponding with Respondents, Inspector Ngondara determined that though Inspector Nikmanesh had requested the acquisition records for Respondent Pharmacy by its unique suite number and PHY number, Cardinal Health and

[2] The Board presented evidence, by way of its witness, that the street value of promethazine with codeine ranges from $500 to $1,000 per pint.

PARMED had included acquisition data for both Respondent Pharmacy and Golden Life Pharmacy II.[3]

11d. Based on his review of the records, Inspector Ngondara was able to determine that 209,066 mL of promethazine with codeine was sold to Golden Life Pharmacy II during the audit period and should not have been included in the total.

11e. During their review of the Board's findings, Respondents advised Inspector Ngondara that there had been the additional acquisition from Anda Pharmaceutical of 56,760 mL of promethazine with codeine which should have been included in the audit.

11f. After consideration of the information provided by Respondents, Inspector Ngondara was able to determine that Respondents could not account for the disposition of 342,342 mL (or approximately 723 pints) of promethazine with codeine.

12. Inspector Ngondara made an additional calculation in order to determine how much loss had occurred under PIC Nalley's tenure versus Respondent Masih's tenure. Using the May 9, 2015 DEA biannual audit, Inspector Ngondara was able to determine that the majority of the loss, approximately 331,240 mL of the 342,342 mL, occurred between December 16, 2012 and May 9, 2015. Respondent Masih had been the PIC for all but four days during this period.

13. Respondents were unable to provide an explanation for the cause of the loss of promethazine with codeine.

Mitigation, Rehabilitation, and Findings Pertinent to Discipline

14. Respondent Masih admitted to the violations for which he was charged and has undertaken remedial steps to ensure that such violations do not reoccur.

15. With respect to Respondents' failure to conduct a biennial inventory, Respondent Masih testified that, prior to opening Respondent Pharmacy, he had worked as a pharmacist for CVS. It was CVS's policy to conduct an inventory every odd year. Based on his experience, he had come to the belief that such inventories were required every odd year. Therefore, in the seven years that Respondent Pharmacy was operating, Respondent Masih conducted four inventories. All but the one in December 2012 were conducted in an odd year. Respondents conducted the inventory in December 2012 as Respondent Masih had been planning to visit his family and, as there were only two weeks left before the next inventory was required, he believed that it would satisfy his requirement. Respondent Masih has since familiarized himself with the requirements and attended a joint training session provided by the Board and the DEA as part of his training requirements on July 18, 2015.

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[3] Golden Life Pharmacy II was a second pharmacy operated by Respondent Masih under a separate permit which was located at the same address in a different suite.

16a. At time of hearing, Respondents still had no explanation for the unaccounted promethazine with codeine but did take remedial action to prevent future losses.

16b. Prior to the Board's investigation, Respondent Masih had locks on the pharmacy doors, security cameras and an alarm system in place. Respondents' security focus, however, had been to prevent theft from outside the pharmacy. Respondents had not put any security measures in place to prevent loss from within the pharmacy.

16c. After discovering the loss, Respondents did not review the cameras as the cameras did not retain video for such an extended period. However, after significant research, Respondent Masih created and implemented a new policy and action plan at the pharmacy. Changes were made to the process in which medication orders could be submitted; the manner in which deliveries could be accepted; the process of paying for medication orders; and the hiring process. Respondents also installed additional cameras throughout the pharmacy and made changes to personnel.

16d. In addition to these changes, Respondent Masih has closed his second pharmacy, Golden Life Pharmacy II, in order to focus his attention solely on Respondent Pharmacy.

17. Respondent Masih has been a licensed pharmacist in California for approximately 12 years. Respondent Pharmacy has been licensed for approximately10 years. Neither license has any prior disciplinary history nor any record of complaints to the Board. In addition to his own testimony, Respondent Masih offered reference letters attesting to his integrity and dedication.

18a. Peter and Peggy Blicha, customers of Respondent Pharmacy, submitted a character reference letter describing Respondent Masih and his wife as helpful and caring. They believe Respondent Pharmacy is a pharmacy that genuinely cares about their customers and are grateful for all Respondent Masih's assistance in researching generic medications to find ones that would meet their needs.

18b. John and Pamela Carradini, customers of Respondent Pharmacy, submitted a character reference letter commending Respondent Masih's devotion to his customers and his encyclopedic knowledge of different medications and willingness to undertake research to assist his customers.

18c. According to Respondent Masih, he advised the letter writers of the charges by the Board and the administrative action pending against him and Respondent Pharmacy.

Citation History

19a. On October 25, 2013, the Board issued Citation Number CI 2013 58403 to Respondent Masih (October 25, 2013 Citation), alleging a violation of Business and Professions Code section 4116, subdivision (a). The underlying facts as stated in the October

25, 2013 Citation is that "Specifically, on 6-26-13 [Respondent] was the only pharmacist on duty supervising the non-pharmacist staff and operating both Golden Life Pharmacy (PHY 48911) located at 1960 Sequoia Ave #5 in Simi Valley, 93063 and Golden Life Pharmacy (PHY 50179) located at 1960 Sequoia Ave #3 in Simi Valley, 93063, at the same time." (Exhibit 21.)

19b. On January 13, 2014, the Board issued two additional citations, Citation Number CI 2012 55974 to Respondent Pharmacy and Citation CI 2013 59108 to Respondent Masih. Both citations alleged a violation of Business and Professions Code section 4116, subdivision (a), citing the same facts that had been the basis for the October 25, 2013 Citation.

19c. At hearing, Respondent Masih demonstrated some confusion regarding the underlying facts of the citations. It was his understanding, however, that the Board had cited him because the PIC he had hired for Golden Life Pharmacy II had not yet taken over the pharmacy. In mitigation, Golden Life Pharmacy II had not yet opened for operation at the time of the incident underlying the citations.

Costs of Prosecution

20. The Board incurred costs in investigating this matter of $9,152.50 and costs of prosecution in the amount of $13,095. A portion of those costs were not reasonably incurred.

21a. The Attorney General's Matter Time Activity report, which details its costs in increments of one-quarter hour and describes each corresponding task performed, reflects that 20.25 hours of Deputy Attorney General time was billed at a rate of $170 per hour for "witness-related preparation." The total cost of this activity is $ 3,442.50.

21b. Inspector Ngondara's declaration for the Board reflects 8.25 hours spent on hearing preparation "which included case file review and witness preparation with the Attorney General's Office." Inspector Ngondara's billing rate for these costs appears to be $127 per hour, which would make the total cost of this activity $1,047.75.

21c. The Board called only one witness, Inspector Ngondara, at hearing. Inspector Ngondara's testimony took less than an hour, was straightforward, uncontroversial and hewed to the allegations set forth in the Accusation. There was no indication that Inspector Ngondara would have required lengthy or elaborate preparation to testify in light of Respondent's own admissions during the investigation that the violations had, in fact, occurred. As a result, the Attorney General's 20.25 hours of witness preparation is disproportionate to the actual time of total witness testimony. A more reasonable amount of witness preparation would be six hours. Therefore, a reasonable total for Attorney General witness preparation costs is $1,020.

21d. Inspector Ngondara's 8.25 hours of hearing and witness preparation was reasonable as it required a detailed understanding and explanation of the audit and an explanation with regards to the amendments made to the original audit findings.

22. With respect to all other Attorney General enforcement costs, the Deputy Attorney General charged $9,652.50 in enforcement costs. For a hearing that took approximately half of the day on allegations Respondents admitted to prior to assignment to the Attorney General's Office, the costs are excessive and, accordingly, are reduced to $4,000.

23. Pursuant to Factual Findings 20 through 22, the Attorney General's reasonable costs are reduced to $5,020.

24. With respect to the Board's investigation, Inspector Nikmanesh charged 12.5 hours ($1,512.50) of investigation time and 26.75 hours ($3,236.75) for report preparation. After Inspector Nikmanesh left the Board, Inspector Ngondara, as the Supervising Inspector had to complete the investigation. Inspector Ngondara charged 9.5 hours ($1,206.50) of investigation and 10.25 hours ($1,301.71) of report preparation. Many of the charges appear to be duplicative as Inspector Ngondara had to familiarize himself with the details of the investigation in order to continue Inspector Nikamanesh's report. As the hours charged for investigation were not detailed with any specificity, the additional 9.5 hours of investigation ($1,206.50) is disallowed. Similarly, a total of 37 hours were charged for report preparation. As it is unclear from the billings how much of the work was duplicative due to Inspector Nikmanesh leaving the Board and how much was simply in order to correct errors that were made in Inspector Nikmanesh's report. Therefore, 8.75 hours ($1,058.75) of Inspector Nikmanesh's report preparation and 5.25 hours ($666.75) of Inspector Ngondara's report preparation hours have been disallowed. The reasonable investigation costs total $6,220.50.

25. Pursuant to Factual Findings 20 and 24, the reasonable costs for investigation and prosecution is $11,240.50.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative hearing to revoke a professional license is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit, and unequivocal, "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.)

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Causes for Discipline

2. Based on the facts set forth in the above Factual Findings, Complainant alleges three separate causes of discipline.

3a. The first alleged cause for discipline is that Respondents are subject to disciplinary action based on Respondent's failure to provide the Board a copy of any DEA biennial inventory conducted between December 17, 2012 and May 9, 2015.

3b. Cause exists to impose discipline on Respondents' licenses pursuant Business and Professions Code section 4300 for unprofessional conduct as defined in section 4301, subdivision (j) and (o), in conjunction with sections 4113, subdivision (c) and 4081, subdivision (a), and California Code of Regulations, title 16 (Regulation), section 1718, in that Respondent have admitted to this violation as set forth in Factual Findings 7, 8, 14 and 15.

4a. The second alleged cause for discipline is that Respondent Pharmacy is subject to disciplinary action based on Respondent Pharmacy's failure to maintain its facilities in such a manner as to prevent theft or diversion.

4b. Cause exists under Business and Professions Code section 4300 for unprofessional conduct as defined in sections 4301, subdivision (o) and/or 4113, subdivision (c), in conjunction with Regulation 1714, subdivision (b), to discipline Respondent Pharmacy's license in that Respondent Pharmacy admits to this violation as set forth in Factual Findings 10 through 14.

5a. The third alleged cause for discipline is that Respondent Masih is subject to disciplinary action for failing to secure the prescription department and provide effective controls to prevent theft or diversion resulting in the loss of 723 pints of promethazine with codeine syrup.

5b. Respondent Masih, through counsel, argued that Regulation 1714, subdivision (d), holds the pharmacist responsible for the security of the prescription department "while on duty" and that Complainant could not show that the loss occurred while Respondent Masih had been "on duty." It should be noted that the majority of the loss occurred while Respondent Masih was PIC for Respondent Pharmacy. Pursuant to Section 4113, a PIC is responsible for compliance with all state and federal laws and regulations. Cause therefore exists, pursuant to Business and Professions Code sections 4300, subdivision (o), and/or 4113, subdivision (c), in conjunction with section 4115, subdivision (h) and Regulation 1714, subdivision (d), to discipline Respondent Masih's pharmacist license in that Respondent Masih admitted that he failed to have controls in place to prevent the theft or diversion of the promethazine with codeine syrup as set forth in Factual Findings 10 through 14.

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Mitigation/Rehabilitation

6. As it was established that cause for discipline exists, the onus is on Respondents to show that there is sufficient rehabilitated from the wrongful acts such that Respondents are fit to hold the license and permit. (Evid. Code, § 500.)

7. In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish respondent. (*Hughes v. Board of Architectural Exam*iners (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

8. Pursuant to Regulation 1760, the Board established its Disciplinary Guidelines (Rev. 10/2007) (Guidelines), which are to be consulted when determining the level of discipline to be imposed on a licensee. In those Guidelines, the Board ranked various violations ranging from the most minor (Category 1) through the most severe (Category IV). The levels of recommended discipline escalate with the severity of the violations. Each of Respondents' violations falls into Category II and Category III. In this case, the result is the same in either category.

9. To determine the level of discipline to be imposed, the Guidelines recommend specific criteria be considered. Those criteria read as follows:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
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
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

10. Respondents' violations of law and regulations governing drug and pharmacy security, specifically as they relates to securing medications had the potential to harm both pharmacy customers and the public at large. (Criteria 1 and 2.) These violations are, by their very nature, severe. (Criteria 6.)

11. On the other hand, Respondents acted, upon notice of these violations, to modify their practices to prevent future such violations and to bring themselves into compliance. (Criteria 9.) There was no evidence presented that any of this conduct was intentional or that Respondents actively participated or benefited financially from the diversion of the promethazine with codeine. (Criteria 6, 9, 14 and 15.)

12. Though Respondents were cited for another violation in the operation of Golden Life Pharmacy II, the violation was unrelated to the conduct which gave rise to the Accusation. (Criteria 4.) Further, Respondents have no prior disciplinary record with the Board. (Criteria 2.)

13. Considering all of these factors, Respondent Pharmacy and Respondent Masih committed serious misconduct due to the volume of promethazine with codeine that had been diverted. Respondents' culpability was attenuated, however, by Respondents' willingness to take responsibility, their cooperation with the Board, and their rehabilitative efforts in modifying their practices. In sum, Respondents appear to be good candidates for probation. The following order will best achieve the purpose of public protection.

ORDER

Pharmacy Permit Number PHY 48911, issued to Mishnik Pharmacy Services, Inc., doing business as Golden Life Pharmacy, and Pharmacist License Number RPH 57887, issued to Respondent Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih, are hereby revoked. However, the revocation is stayed and Respondents are placed on probation for four years upon the following terms and conditions:

1. Obey All Laws

Respondents shall obey all state and federal laws and regulations. Respondent Masih 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 contendre 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 registered 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

Respondents 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, Respondents 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 Masih 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 (2) 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

Respondents shall cooperate with the board's inspection program and with the board's monitoring and investigation of Respondents' compliance with the terms and conditions of their probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

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

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6. Notice to Employers

During the period of probation, only where applicable, Respondent Masih shall notify all present and prospective employers of the decision in case number 5773 and the terms, conditions and restrictions imposed on Respondents by the decision, as follows: Within 30 days of the effective date of this decision, and within 15 days of Respondent Masih undertaking any new employment, in that event only Respondent Masih shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent Masih'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 5773, and terms and conditions imposed thereby. It shall be Respondent Masih's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If Respondent Masih should work for or become employed by or through a pharmacy employment service, he must notify his 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 5773 in advance of 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 Masih undertaking any new employment by or through a pharmacy employment service, in that event Respondent Masih shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5773 and the terms and conditions imposed thereby. It shall be Respondent Masih's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely 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 Respondent Masih is an employee, independent contractor or volunteer.

7. No Supervision of Interns

During the period of probation, Respondent Masih shall not supervise any intern pharmacist. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

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8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondents shall pay to the board its costs of investigation and prosecution in the amount of $11,240.50. It is within the board's discretion to establish a reasonable monthly or quarterly repayment plan with Respondents.

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

The filing of bankruptcy by either Respondent shall not relieve them of their responsibility, jointly and severally, to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondents 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 Licenses

Respondents shall, at all times while on probation, maintain active, current licenses 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 Respondents' licenses expire or are 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 respondents' licenses 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 Masih cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent Masih may tender his 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 Masih 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 Masih's license history with the board.

Upon acceptance of the surrender, Respondent Masih shall relinquish his pocket and wall license to the board within 10 days of notification by the board that the surrender is

accepted. Respondent Masih may not reapply for any license from the board for three years from the effective date of the surrender. Respondent Masih 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 Masih 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 Masih 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

Except during periods of suspension, Respondent Masih shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 120 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent Masih must nonetheless comply with all terms and conditions of probation.

Should Respondent Masih, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 120 hours per calendar month in California, Respondent must notify the board in writing within 10 days of the cessation of practice, and must further notify the board in writing within 10 days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent Masih's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 48 months.

"Cessation of practice" means any calendar month during which Respondent Masih is not practicing as a pharmacist for at least 120 hours, as defined by Business and Professions Code section 4000 et seq . "Resumption of practice" means any calendar month during which Respondent Masih is practicing as a pharmacist for at least 120 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

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14. Violation of Probation

If Respondents have not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondents, 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 Respondents violate probation in any respect, the board, after giving Respondents 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 either 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. Pharmacy Self-Assessment Mechanism

Within the first year of probation, Respondent Masih shall complete the Pharmacist Self-Assessment Mechanism (PSAM) examination provided by the National Association of Boards of Pharmacy (NABP). Respondent Masih shall submit a record of completion to the board demonstrating he has completed this examination. Respondent Masih shall bear all costs for the examination. Continuing education hours received for this examination shall not be used as part of the required continuing education hours for renewal purposes.

Failure to timely complete the PSAM or submit documentation thereof shall be considered a violation of probation.

Respondent Masih shall waive any rights to confidentiality and provide examination results to the board or its designee.

16. No New Ownership of Licensed Premises

Respondent Masih 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 business, firm, partnership, or corporation licensed by the board in addition to, or other than, Respondent Pharmacy. If Respondent Masih 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.

17. Separate File of Records (For pharmacist owners and pharmacists-in-charge)

Respondents shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

18. Report of Controlled Substances (For pharmacist owners and pharmacists-in-charge)

Respondent Masih shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent Masih 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 Masih 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.

19. Ethics Course

Within 60 calendar days of the effective date of this decision, Respondent Masih shall enroll in a course in ethics, at Respondent Masih's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation. Respondent Masih shall submit a certificate of completion to the board or its designee within five days after completing the course.

20. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, Respondents' licenses will be fully restored.

DATED: February 5, 2018

DocuSigned by:
Nana Chin
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NANA CHIN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **MISHNIK PHARMACY SERVICES INC., dba GOLDEN LIFE PHARMACY; MOHSEN ABDEL AMGAD MASIH, aka AMGAD MOHSEN MASIH** **President and Owner** **1960 Sequoia Ave., #5** **Simi Valley, CA 93063** **Original Permit No. PHY 48911** **And** **AMGAD MOHSEN MASIH, aka MOHSEN ABDEL AMGAD MASIH** **1089 Currier Avenue** **Simi Valley, CA 93065** **Original Pharmacist License No. RPH 57887** Respondents.	Case No. 5773 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about January 8, 2008, the Board of Pharmacy issued Pharmacy Permit Number PHY 48911 to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy; Mohsen

Abdel Amgad Masih, aka Amgad Mohsen Masih, President and Owner of 100% of the outstanding shares (Respondent Golden Life Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2018, unless renewed.

3. On or about November 23, 2005, the Board issued Pharmacist License No. RPH 57887 to Amgad Mohsen Masih, aka Mohsen Abdel Amgad Masih (Respondent Masih). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2017, unless renewed.

JURISDICTION

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

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

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STATUTORY AND REGULATORY PROVISIONS

8. Section 4059, subdivision (a) of the Code states:

"A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

9. Section 4059.5, subdivision (a) of the Code states:

"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."

10. Code section 4060 provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

11. Section 4081, subdivision (a) of the Code states:

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

12. Section 4113, subdivision (c) of the Code states:

....

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

....

13. Section 4115, subdivision (h) of the Code states:

"The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist."

14. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

....

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

....

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

....

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

suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

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

15. Section 4307 of the Code states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, 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.

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

(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.

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

California Code of Regulations, title 16, section 1714, subdivision (b) provides that 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.

16. California Code of Regulations, title 16, section 1714, subdivision (d) provides that each pharmacist licensed by the board 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, and that possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

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

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

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

18. Code of Federal Regulations, title 21, section 1304.11 state in pertinent part:

> (a) *General requirements.* 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 . . .
>
> (b) *Initial inventory date.* Every 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 . . .

(c) *Biennial inventory date.* After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

. . . .

19. Health and Safety Code section 11209, subdivision (a) states:

"No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substances received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy."

20. Health and Safety Code section 11350, subdivision (a) states:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code."

21. Health and Safety Code section 11351, states:

"Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e)

of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years."

COST RECOVERY

22. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

24. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

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

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

25. **Promethazine/Codeine Syrup 10 mg – 6.25 mg/5 mL** (brand name **Phenergan/Codeine Syrup 10 mg – 6.25 mg/5 mL**) is a Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a cough suppressant.

SUMMARY OF FACTS

26. Pharmacy drug acquisition data analysis determined a need for inspection at Respondent Golden Life Pharmacy located at 1960 Sequoia Avenue #5, Simi Valley, California

93063 to evaluate the pharmacy's dispensing practices regarding the controlled substance promethazine with codeine. An inspection, collection of documents, and audit of the pharmacy's acquisition and dispensing data substantiated a loss of over 700 pint sized bottles of promethazine with codeine syrup from December 2012 to August 2015.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Complete Acquisition/Disposition Records)

27. Respondents GOLDEN LIFE PHARMACY and AMGAD MASIH are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with sections 4113, subdivision (c) and 4081, subdivision (a), and California Code of Regulations, title 16, section 1718 for failure to maintain all records of acquisition and disposition for three (3) years from date of making and to keep a current inventory of dangerous drugs. During an inspection on August 24, 2015, Respondent Golden Life Pharmacy was unable to provide any DEA biennial inventory conducted between December 17, 2012 and May 9, 2015, a period of more than two (2) years, as required by title 21 of the Code of Federal Regulations section 1304.11(a)(b)(c). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 26 as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Security of Pharmacy)

28. Respondent GOLDEN LIFE PHARMACY is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivision (o), and/or 4113, subdivision (c), in conjunction with California Code of Regulations, title 16, section 1714, subdivision (b), for failing to maintain its facilities, space, fixtures, and/or equipment so that drugs are safely and properly prepared, and secured to maintain effective controls to prevent theft or diversion. Specifically, between December 16, 2012 and August 24, 2015, Respondent Golden Life Pharmacy could not account for a loss of approximately 723 pints of promethazine with codeine syrup. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 26 as though set forth fully.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Security of Controlled Substances)

29. Respondent AMGAD MASIH is subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivision (o), and/or 4113, subdivision (c), in conjunction with section 4115, subdivision (h) and California Code of Regulations, title 16, section 1714, subdivision (d), for failing to secure the prescription department and provide effective controls to prevent theft or diversion. From approximately December 16, 2012 to May 9, 2015, a time period which RPH AMGAD MASIH was Pharmacist-in-Charge, Respondent Golden Life Pharmacy could not account for approximately 700 pints of promethazine with codeine syrup (96.7% of the total loss). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 26 as though set forth fully.

OTHER MATTERS

30. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy, Respondent Golden Life Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy Permit Number PHY 48911 is reinstated if it is revoked.

31. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy, while Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih has been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy Permit Number PHY 48911 is reinstated if it is revoked.

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DISCIPLINARY CONSIDERATIONS

32. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges, as follows:

a. On or about January 13, 2014, Respondents GOLDEN LIFE PHARMACY and AMGAD MASIH were issued Citation Numbers CI 2012 55974 and CI 2013 59108, respectively, for violating Business and Professions Code section 4116 subdivision (a). The Citation and Fine were $1,500.00 each to Respondent Golden Life Pharmacy and Amgad Masih, which has been paid and is now final.

b. On or about October 25, 2013, Respondent AMGAD MASIH was issued Citation Number CI 2013 58403 for violating Business and Professions Code section 4116 subdivision (a). The Citation and Fine was $1,000.00, which has been paid and is now final.

PRAYER

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

1. Revoking or suspending Pharmacist License Number PHY 48911, issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 57887, issued to Amgad Mohsen Masih, aka Mohsen Abdel Amgad Masih;

3. Prohibiting Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy Permit Number PHY 48911 is reinstated if Pharmacy Permit Number 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy is revoked;

4. Prohibiting Mohsen Abdel Amgad Masih, aka Amgad Mohsen Masih from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 48911 is placed on probation or until Pharmacy Permit Number PHY 48911 is reinstated if Pharmacy Permit Number 48911 issued to Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy is revoked;

5. Ordering Mishnik Pharmacy Services Inc., dba Golden Life Pharmacy and Amgad Mohsen Masih, aka Mohsen Abdel Amgad Masih to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/13/17

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

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